333. Also, petition of students of Spencerian School, Cleveland, Ohio, favoring extension of vocational training period; to the Committee on World War Veterans' Legislation.

334. By Mr. NEWTON of Minnesota: Resolution of the Minneapolis Principals' Forum, favoring the establishment of a Federal department of education; to the Committee on Education.

335. Also, resolution of the Minneapolis Principals' Forum, indorsing the entry of the United States into the Permanent Court of International Justice; to the Committee on Foreign Affairs.

336. Also, resolution by the Minneapolis and St. Paul joint local executive board of the United Brewery, Flour, Cereal, and Soft Drink Workers International Union, calling upon the Congress of the United States to conduct an investigation of the so-called Bread Trust; to the Committee on Interstate and Foreign Commerce.

337. Also, resolution by the Central Labor Union of the city of Minneapolis, requesting Congress to investigate the so-called Bread Trust; to the Committee on Interstate and Foreign Commerce.

SENATE

MONDAY, *January 11, 1926*

(Legislative day of Thursday, January 7, 1926)

The Senate reassembled at 12 o'clock meridian, on the expiration of the recess.

PNEUMATIC-TUBE SERVICE, BOSTON, MASS. (S. DOC. NO. 35)

The VICE PRESIDENT laid before the Senate a communication from the President of the United States, transmitting a supplemental estimate of appropriation for the Post Office Department, fiscal year ending June 30, 1927, for the reestablishment of a pneumatic-tube service in the city of Boston, Mass., in amount $24,000, which, with the accompanying papers, was referred to the Committee on Appropriations and ordered to be printed.

CLAIMS OF BETHLEHEM STEEL CO. EMPLOYEES (S. DOC. 37)

The VICE PRESIDENT laid before the Senate a communication from the Secretary of War, relative to the claims of certain employees of the Bethlehem Steel Co. under the award of the National War Labor Board of July 31, 1918, "in accordance with the interpretations and the classifications and adjustments made under the direction of the board in pursuance of such award," which, with the accompanying papers, was referred to the Committee on Claims and ordered to be printed.

WITHDRAWALS AND RESTORATIONS OF PUBLIC LANDS

The VICE PRESIDENT laid before the Senate a communication from the Secretary of the Interior, transmitting a report of the Commissioner of the General Land Office, dated January 6, 1926, relative to withdrawals and restorations of public lands under the act of June 25, 1910 (36 Stat. 847), during the period from December 1, 1924, to November 30, 1925, inclusive, which, with the accompanying statement, was referred to the Committee on Public Lands and Surveys.

FRED A. GOSNELL AND RICHARD C. LAPPIN

The VICE PRESIDENT laid before the Senate a communication from the Assistant Secretary of Commerce, transmitting draft of a proposed bill to relieve Fred A. Gosnell, former disbursing clerk, Bureau of the Census, and the estate of Richard C. Lappin, former supervisor of the Fourteenth Decennial Census for the Territory of Hawaii and special disbursing agent in the settlement of certain accounts, which the department recommends be enacted into law during the present session, which, with the accompanying paper, was referred to the Committee on Claims.

PETITIONS AND MEMORIALS

Mr. WARREN presented a petition of sundry citizens of Converse County, Wyo., praying for continuation of the policy of restricted immigration, which was referred to the Committee on Immigration.

He also presented a petition of sundry citizens of Washakie County, Wyo., praying for the repeal or substantial modification of the prohibition enforcement act, which was referred to the Committee on the Judiciary.

Mr. BINGHAM presented a resolution adopted by the Bar Association of Hawaii, favoring the participation of the United States in the Permanent Court of International Justice, with the reservations recommended by Presidents Harding and Coolidge, which was ordered to lie on the table.

Mr. WILLIS presented a memorial of sundry citizens of Hocking County, Ohio, remonstrating against the participation of the United States in the Permanent Court of International Justice, which was ordered to lie on the table.

Mr. COPELAND. Mr. President, I present a petition numerously signed by constitutents who are members and attendants of the Flatbush Congregational Church, of Brooklyn, N. Y. I ask that the petition may lie on the table and that the body of it may be printed in the RECORD.

There being no objection, the petition was ordered to lie on the table and to be printed in the RECORD, as follows:

MEMORIAL TO THE PRESIDENT AND CONGRESS OF THE UNITED STATES

We, the undersigned, members and attendants of the Flatbush Congregational Church, Dorchester Road and East Eighteenth Street, Brooklyn, N. Y., do hereby express ourselves in favor of the entry by the United States of America into the World Court, subject to such reservations as may be deemed advisable by the Congress.

DECEMBER 20, 1925.

BILLS INTRODUCED

Bills were introduced, read the first time, and, by unanimous consent, the second time, and referred as follows:

By Mr. FLETCHER:

A bill (S. 2327) for the development of the fishery resources of the South Atlantic States, and other purposes; to the Committee on Commerce.

By Mr. KEYES:

A bill (S. 2329) granting an increase of pension to Leroy E. Smith; to the Committee on Pensions.

By Mr. SWANSON:

A bill (S. 2330) for the relief of Phil. P. Goodman, former second lieutenant, United States Marine Corps; to the Committee on Naval Affairs.

By Mr. HARRELD:

A bill (S. 2331) granting a pension to Joseph A. Branstetter; and

A bill (S. 2332) granting an increase of pension to Augusta Myers; to the Committee on Pensions.

A bill (S. 2333) for the relief of Maj. Charles P. Hollingsworth; to the Committee on Military Affairs.

A bill (S. 2334) authorizing the sale and conveyance of certain lands on the Kaw Reservation in Oklahoma; to the Committee on Indian Affairs.

By Mr. BINGHAM:

A bill (S. 2335) for the relief of the Andrew Radel Oyster Co. (with accompanying papers); and

A bill (S. 2336) to reimburse Commander Walter H. Allen, civil engineer, United States Navy, for losses sustained while carrying out his duties (with accompanying papers); to the Committee on Claims.

A bill (S. 2337) to amend the act entitled "An act for making further and more effectual provision for the national defense, and for other purposes," approved June 3, 1916, as amended, and for other purposes; and

A bill (S. 2338) authorizing the President to reappoint Chester A. Rothwell, formerly a captain of Engineers, United States Army, an officer of Engineers, United States Army (with accompanying papers); the Committee on Military Affairs.

By Mr. STANFIELD:

A bill (S. 2339) to amend section 27 of the general leasing act approved February 25, 1920 (41 Stat. L. p. 437); to the Committee on Public Lands and Surveys.

By Mr. ODDIE:

A bill (S. 2340) for the adjustment of water right charges on the Newlands irrigation project, Nevada, and for other purposes; to the Committee on Irrigation and Reclamation.

By Mr. HARRIS:

A bill (S. 2341) authorizing appropriation of $100,000 for the erection of a monument or other form of memorial at Jasper Spring, Chatham County, Ga., to mark the spot where Sergt. William Jasper, a Revolutionary hero, fell; to the Committee on the Library.

A bill (S. 2342) to preserve Fort Pulaski, near Savannah, in Chatham County, Ga., as a national military memorial park on account of its historic interest in Revolutionary times and since; to the Committee on Military Affairs.

A bill (S. 2343) providing for the examination and survey of Ogeechee River, Ga.; to the Committee on Commerce.

A bill (S. 2344) granting a pension to Sarah B. Arnett; to the Committee on Pensions.

A bill (S. 2345) for the relief of the heirs of Bernhard Strauss;

A bill (S. 2346) for the relief of Horace M. Cleary; and

A bill (S. 2347) for the relief of Ambrose A. Campbell; to the Committee on Claims.

By Mr. WALSH:

A bill (S. 2348) for the relief of Nick Masonich; to the Committee on Claims.

By Mr. WADSWORTH:

A bill (S. 2349) to authorize the Secretary of War to sell exterior articles of the uniform to honorably discharged enlisted men; to the Committee on Military Affairs.

By Mr. WARREN:

A bill (S. 2350) granting an increase of pension to Jennie M. Chambers (with accompanying papers); to the Committee on Pensions.

By Mr. BUTLER:

A bill (S. 2351) granting an increase of pension to Frank A. Kendall (with accompanying papers); to the Committee on Pensions.

By Mr. COPELAND:

A bill (S. 2352) granting an increase of pension to Anna M. Hamilton; to the Committee on Pensions.

By Mr. BROUSSARD:

A bill (S. 2353) to amend the military record of Leo J. Pourclau, and for other purposes; to the Committee on Military Affairs.

By Mr. ERNST:

A bill (S. 2354) to amend an act entitled "An act making appropriations for sundry civil expenses of the Government for fiscal year ending June 30, 1884, and for other purposes"; to the Committee on Patents.

A bill (S. 2355) granting an increase of pension to Emma Park (with accompanying papers); to the Committee on Pensions.

By Mr. JONES of Washington (for Mr. DU PONT):

A bill (S. 2356) granting a pension to John T. Dickey (with an accompanying paper); and

A bill (S. 2357) granting a pension to Charles W. Robinson (with an accompanying paper); to the Committee on Pensions.

By Mr. KING:

A bill (S. 2358) to permit the admission, as nonquota immigrants, of certain alien wives and children of United States citizens; to the Committee on Immigration.

By Mr. TRAMMELL:

A bill (S. 2359) for the purchase of a site and the erection of a post-office building thereon at Avon Park, Fla.; to the Committee on Public Buildings and Grounds.

By Mr. SHEPPARD:

A bill (S. 2360) for the relief of Fred Hartel and others; to the Committee on Claims.

By Mr. McKINLEY:

A bill (S. 2361) for the relief of Joliet Forge Co.; to the Committee on Claims.

A bill (S. 2362) for the relief of Romus Arnold (with accompanying papers); to the Committee on Military Affairs.

By Mr. STANFIELD:

A bill (S. 2363) to transfer to the classified civil service postmasters in charge of the post offices of the first, second, and third class; to the Committee on Civil Service.

By Mr. MOSES:

A bill (S. 2364) granting an increase of pension to Emily S. Rowe (with accompanying papers); to the Committee on Pensions.

USE OF COPYRIGHT MUSIC ON RADIO

Mr. DILL. Mr. President, I introduce a bill and ask that it be referred to the Committee on Patents. I should like to say just a word about the bill. It is a bill to provide that copyrighted music that is used or permitted to be used on one radio broadcasting station by the proprietor or author shall be available to all broadcasting stations. I think it will bring about a better situation than the present condition of chaos that exists in the use of music over the radio. I ask that the bill be referred to the Committee on Patents.

The bill (S. 2328) to amend section 1 of an act entitled "An act to amend and consolidate the acts respecting copyright," approved March 4, 1909, as amended, by adding subsection (f), was read twice by its title and referred to the Committee on Patents.

AMENDMENT TO TAX REDUCTION BILL

Mr. ODDIE submitted an amendment intended to be proposed by him to House bill No. 1, the tax reduction bill, which was referred to the Committee on Finance and ordered to be printed.

AMENDMENT TO INTERIOR DEPARTMENT APPROPRIATION BILL

Mr. ODDIE submitted an amendment to the Interior Department appropriation bill, on page 75, line 11, beginning with the word "*Provided*," to strike out the provisos down to and including line 17, on page 77, relating to the Newlands project, Spanish Springs division, Nevada, intended to be proposed by him to House bill 6707, the Interior Department appropriation bill, which was referred to the Committee on Irrigation and Reclamation and ordered to be printed.

SHIPPING BOARD VESSELS

Mr. JONES of Washington. Mr. President, Senate Resolution 86 is now on the table. It calls for certain information from the War Department with reference to the demand on the Shipping Board for transports. I ask that the resolution may be referred to the Committee on Commerce. I also ask that certain letters which I have in my hand may be printed in the RECORD and then referred to the Committee on Commerce. I think the letters give all the facts in regard to the matter. I shall not take the time of the Senate to have them read.

The VICE PRESIDENT. Without objection, Senate Resolution 86 will be referred to the Committee on Commerce, and the letters will be referred to the same committee and printed in the RECORD.

The letters are as follows:

(By special messenger)

DECEMBER 14, 1925.

Hon. T. V. O'CONNOR,
Chairman United States Shipping Board,
Washington, D. C.

MY DEAR MR. CHAIRMAN: I understand that the Budget office has requested the Shipping Board to turn over to the War Department for use as transports two of the five ships of the Admiral Oriental Line running out from Puget Sound to the Orient.

Will you kindly send me as soon as possible a copy of this request and a statement of the reasons given for an action which, if granted, would be most injurious to our merchant marine and our commercial development.

I trust this request of mine will not delay the prompt rejection of the application for the transfer of these ships.

Very respectfully yours,

WESLEY L. JONES.

UNITED STATES SHIPPING BOARD,
OFFICE OF THE CHAIRMAN,
Washington, December 14, 1925.

Hon. WESLEY L. JONES,
United States Senate, Washington, D. C.

DEAR SENATOR JONES: I have your letter of December 12 with reference to the ruling of the chief coordinator, Bureau of the Budget, that the Shipping Board turn over to the War Department two of its 535 type vessels or direct the Fleet Corporation to construct two new vessels for the War Department to be used as transports.

I am sending herewith copy of the original letter received from General Smither, the coordinator, and copy of the board's reply, dated December 12.

Very truly yours,

T. V. O'CONNOR, *Chairman.*

OFFICE OF THE CHIEF COORDINATOR,
Washington, December 5, 1925.

Mr. T. V. O'CONNOR,
Chairman United States Shipping Board,
Washington, D. C.

MY DEAR MR. O'CONNOR: The pressure under which the War Department labors in respect to its need for transports has resulted in a recurrence of its demand for the transfer of two of the remaining Shipping Board vessels of the Camden type. The letter from the Assistant Secretary of War, which conveys this demand, also invites attention to the current reports that private interests are negotiating for the purchase of the five 535-foot Camden class ships now operating in the Admiral Oriental line from Seattle to the Orient.

The recent specific case of the *American Legion* and the *Southern Cross* presented an issue so clear-cut and obvious, as far as the interest of the Federal Government was concerned, that I felt no misgiving in deciding adversely to the request of the War Department for the transfer of these particular ships. In considering the general claim for two ships of the Camden type, however, I am unable to disregard the fact that because of statements made by Shipping Board representatives before Congress to the effect that transports could and should be constructed by the Shipping Board, the War Department was not allowed funds to build transports for itself, and that five of the

Camden type ships were actually constructed as transports, with funds diverted from the War Department to the Shipping Board, as a direct result of these representations. I am therefore constrained to consider the War Department's claim as valid up to the point where it becomes incompatible with the best interests of the Government as they are reflected in the policy of nurturing the steady growth of a successful merchant marine.

I have again considered all of the arguments advanced by the Shipping Board in connection with the proposed transfer of the *American Legion* and the *Southern Cross*, since I assume that the facts brought out in the discussion of that specific case are applicable, in part at least, to the general situation. I have also reviewed in detail the policy of the board relative to methods of disposal to private interests of Government-owned vessels. I am forced to the conclusion that in the present piecemeal dispersion of these ships there is absolutely no assurance that the intent of Congress to establish a merchant marine, owned and operated by citizens of the United States, can be safeguarded so long as the controlling interest in the several operating companies is available for purchase by any combination of shipping interests, either foreign or domestic. I am equally convinced that the transfer of two of the Camden type ships to the War Department would be in complete conformity with the policy of Congress in providing for a merchant marine primarily to meet the needs of national defense.

Mindful of these facts and of the implied prohibition existing in the merchant marine act of 1920 of the transfer of title to the Shipping Board of any vessels required by other branches of the Government, the decision of this office in the premise is:

"That the Shipping Board restore to the War Department two of the 535-foot Camden class vessels, originally constructed as transports, with funds intended by Congress to be used for this purpose, or if the restitution of these ships operates to disrupt materially the Shipping Board's liquidation program, that the board authorize the Emergency Fleet Corporation to proceed with the construction of two transports of a similar type, to be turned over to the War Department when completed; the cost of the construction of these transports to be defrayed from Shipping Board funds, thus effecting a return to the War Department of a portion of $33,000,000, which was diverted from its appropriations on the representations referred to in the preface of this communication.

"In view of the magnitude and the far-reaching effects of the questions involved, the period of four days allowed for appeal from the decision of this office as prescribed by paragraph 7 of the Executive Order of November 8, 1921, is waived, and action under this decision is suspended to permit you a reasonable time to prepare any counter argument which you may desire to submit for the action of superior authority."

Very sincerely yours,

H. C. SMITHER,
Chief Coordinator.

DECEMBER 12, 1925.

Gen. H. C. SMITHER,
Chief Coordinator, Room 817, Arlington Building,
Washington, D. C.

DEAR GENERAL SMITHER: Receipt is acknowledged of your letter of December 5, advising that you have determined that the Shipping Board should restore to the War Department two of the 535-foot Camden class of vessels for use as transports, with the alternative that should such restitution operate to disrupt materially the Shipping Board's liquidation program, that the board is directed to authorize the Emergency Fleet Corporation to proceed with the construction of two transports of similar type to be turned over to the War Department when completed, the cost of construction of said vessels to be defrayed from Shipping Board funds.

Section 7 of the merchant marine act, 1920, authorized and directed the board to investigate and determine what steamship lines should be established and put in operation from ports in the United States to world markets, and to determine the type, size, speed, and other requirements of vessels to be employed upon such lines, and the frequency and regularity of their sailings. The board was further authorized to sell or charter vessels to citizens of the United States for the purpose of establishing and maintaining such lines, and in the event it was unable to establish such lines by charter or sale, the board was directed to operate vessels on such lines until the business was developed to a point where such vessels could be sold on satisfactory terms, unless it should appear within a reasonable time that such lines could not be made self-sustaining.

The Shipping Board determined the necessity of establishing a trans-Atlantic line out of the port of New York and a trans-Pacific line out of the port of Seattle, Wash. The trans-Atlantic service is operated by the United States Lines, which company was created by the board. The trans-Pacific service is operated by the Admiral Oriental Line, acting as agent for the board, the trade name of the line being the American Oriental Mail Line.

The board has only seven vessels of the 535-foot Camden type, two of said vessels, namely, the *Presidents Harding* and *Roosevelt*, being operated in conjunction with the steamship *George Washington*, by the United States Lines in its first-class service from New York to Plymouth, Cherbourg, and Bremen. The five remaining vessels, namely, the *Presidents Grant, Madison, Jackson, McKinley*, and *Jefferson*, are operated as the American Oriental Mail Line, furnishing 12 days' service from Seattle, Wash., and Victoria, British Columbia, to Yokohama, Kobe, Shanghai, Hongkong, and Manila over the Pacific short route.

Many millions of dollars have been expended by the board in establishing these important and essential services. To remove either the *Harding* or *Roosevelt* from the United States Lines would necessitate the abandonment of one of its routes, unbalancing its fleet and placing the line in a position where it could not possibly offer formidable competition to the existing foreign trans-Atlantic lines. As a matter of fact, the facilities at the disposal of the United States Lines should be increased rather than decreased. It is further the opinion of the board that none of the five vessels now operated as the American Oriental Mail Line can be taken out of the service without practically abandoning same, thus giving to foreign lines the entire trans-Pacific business from the Pacific Northwest.

You state that you have reviewed in detail the policy of the board relative to methods of disposal to private interest of Government-owned vessels, and that you are forced to the conclusion that in the present piecemeal dispersion of these ships there is absolutely no assurance that the intent of Congress to establish a merchant marine owned and operated by citizens of the United States can be safeguarded so long as the controlling interest in the several operating companies is available for purchase by any combination of shipping interests, either foreign or domestic. For your information it is pointed out that the board is not making a piecemeal dispersion of this type of vessel, nor is its problem one solely of liquidation. Vessels of this type are being sold in groups, constituting established lines. These lines are sold only to companies that qualify as American citizens under the provision of the merchant marine act, 1920. Vessels so sold can not be transferred to foreign flag, and in this connection would refer you to the third paragraph of section 18 of the merchant marine act, 1920, as follows:

"It shall be unlawful to sell, transfer, or mortgage, or, except under regulations prescribed by the board, to charter, any vessel purchased from the board or documented under the laws of the United States to any person not a citizen of the United States, or to put the same under a foreign registry or flag without first obtaining the board's approval."

For your further information the board in the sale of established lines is requiring adequate guaranties for their continued operation, and all contracts provide for forfeiture of said vessels to the board in the event of failure to maintain the service during the required period. It is therefore the position of the board that its sales policy provides absolutely for the continuance of lines and services, the necessity for which it has determined, and, further, that its policy provides for the continuance of the vessels under the American flag, where they are at all times available for the service of the Government in time of war or national emergency.

In view of the foregoing I have to advise you that the board can not comply with your first direction, namely, that the board restore to the War Department two of the 535-foot Camden type vessels for use as transports.

As to the alternative suggested in your decision, namely, that the Shipping Board authorize the Emergency Fleet Corporation to proceed with the construction of two transports of similar type to be turned over to the War Department, the cost of which to be defrayed from the Shipping Board funds, thus effecting a return to the War Department of a portion of the $33,000,000 which is alleged to have been diverted from its appropriations, you are advised that such construction is expressly prohibited by law, and, further, there are no funds available even if authorized.

With reference to the item of $33,000,000 for the construction of transports which is alleged to have been diverted from the War Department appropriation, it might be stated that the War Department, in September of 1919, expressly waived any claim to vessels of the 535-foot Camden type then under construction, and consented to the Fleet Corporation completing said vessels as combination passenger and cargo carriers. Under date of September 30, 1919, the Secretary of War made formal demand upon the Shipping Board for the completion of 11 of the type "B" Hog Island vessels for use as the permanent transport fleet of the Army.

Subsequent thereto these vessels, which otherwise would have been canceled, were completed by the Fleet Corporation, certain of them being changed from Atlantic type transports to Pacific type transports in accordance with the plans submitted by the War Department. Upon their completion 11 of these vessels were turned over to the

War Department, the remaining 1 by consent being transferred to the Navy Department. The $33,000,000 item alleged to have been diverted from the War Department appropriations was originally intended to apply to 11 vessels of the Hog Island "B" type.

The cost to the Fleet Corporation of the 12 Hog Island "B" type transports was $38,798,614.50, the 11 of said vessels which were turned over to the Army costing $35,023,753.85. The delivery of these vessels to the Army was accomplished without transfer of funds.

In the past it has always been the policy of this board to cooperate with your office toward the more efficient operation of the various governmental activities and this policy has not been changed. The board would at this time be very glad to submit to you a comprehensive plan for remedying the difficulties of the War Department in connection with its Pacific transport service. This plan contemplates the moving of troops and Army supplies to Manila in vessels under the United States flag, the private property of American citizens and the United States Shipping Board. It is our belief that such a plan offers many advantages to the War Department at greatly reduced cost to the Government and tends to promote an American merchant marine privately owned.

Very truly yours, T. V. O'CONNOR, *Chairman.*

UNITED STATES SHIPPING BOARD,
OFFICE OF THE CHAIRMAN,
Washington, December 14, 1925.

Hon. WESLEY L. JONES,
United States Senate, Washington, D. C.

DEAR SENATOR JONES: I received this morning your letter of December 14 asking for a copy of the request from the coordinator, Bureau of the Budget, and copy of action taken by the board. I had already sent you under separate letter, in answer to your letter of the 12th, copy of the letter from the Bureau of the Budget and copy of our reply, which, I think, meets with your views.

I regretted very much that the coordinator saw fit to render a decision ordering this to be done without first giving us an opportunity to acquaint him with the facts, which he appeared not to have, especially so since at his suggestion, growing out of the conference recently had with him and the War Department concerning application for the transfer of two ships from the Pan American service, it was agreed that a committee of the War Department and the Shipping Board would be appointed to cooperate with the coordinator in seeing what could be done. I named a member of this committee representing me, but we have never heard anything from the coordinator or the War Department with reference to it. You probably know that we have consistently offered to the War Department the *Agamemnon* and the *Mount Vernon.*

Very truly yours,

T. V. O'CONNOR, *Chairman.*

UNITED STATES SHIPPING BOARD,
OFFICE OF THE CHAIRMAN,
Washington, December 19, 1925.

Hon. WESLEY L. JONES,
United States Senate, Washington, D. C.

DEAR SENATOR JONES: For your information, I am sending you herewith letter which I have to-day sent to the chief coordinator, in which matter you are, no doubt, interested.

Very truly yours,

T. V. O'CONNOR, *Chairman.*

DECEMBER 18, 1925.

Gen. H. C. SMITHER,
Chief Coordinator, Bureau of the Budget, Washington, D. C.

DEAR GENERAL SMITHER: I have your letter of December 15 announcing the withdrawal of your decision that the Shipping Board turn over two combination passenger and freight vessels of the 535 Camden type to the Army to be used as transports or to construct similar vessels for that purpose.

Among other things, you say you would be glad to receive the plan referred to in my letter of December 12 which may offer increased advantages in transport service to the Army at greatly reduced cost and at the same time promote our national purpose.

The board had in mind the question of moving personnel and supplies of the Army and Navy in commercial vessels under the United States flag belonging to private American citizens or the Shipping Board in substitution of transports now maintained by the Army and Navy. This question has been discussed at various times but no definite action has ever been taken.

In view of the Government's struggle to establish a merchant marine with limited funds with which to absorb the losses on the lines operated by the Shipping Board as mandated by Congress, it seems to us abhorrent from the broad governmental standpoint that the Army and the Navy and the Shipping Board and the private American lines should maintain ships running parallel where it can be avoided. In the interest of the American merchant marine it is vital that every opportunity be given American ships, and nothing is more important than the use of these vessels in the movement of officers and their families, enlisted personnel, and supplies by the Government departments wherever possible. Any particular inconveniences here and there to one department or another should be, it seems to us, subordinated in the interest of efficiency and economy when and if at the same time we meet the common purpose of national defense and promotion of foreign commerce.

The regularity of sailings of American flag vessels from San Francisco and Seattle offers to the Army and to the Navy a more frequent and permanent service than can be maintained by transports now running parallel with these American merchant lines.

The Dollar Steamship Line is maintaining a regular service on a fortnightly schedule with fast combination passenger and cargo vessels bought from the Shipping Board to far eastern ports, including Manila, from San Francisco and return. The Shipping Board, through the Admiral Oriental Line, is operating a similar type of vessel on a 12-day schedule from Seattle to the Orient and return. Of course, there are many other features for discussion and agreement before definite arrangements can be made.

The Dollar Steamship Line service to the Far East consists of two routes: (1) The "trans-Pacific service" from San Francisco, with a weekly sailing (Saturday) to Manila, via Honolulu, Yokohama, Kobe, Shanghai, and Hongkong, the voyage requiring 29 days from San Francisco to Manila, and return on a similar itinerary, the ports in reverse order; (2) "round-the-world service," with vessels slightly smaller, known as the 502's, sailings every two weeks from Los Angeles and San Francisco to Manila in the same order of outward ports of call as in the "trans-Pacific service"; i. e., vessels proceed from Manila to Singapore, Penang, Colombo, and homeward to the Atlantic coast of the United States through the Suez Canal and Mediterranean, constituting only a one-way or outward service. The duration of the voyage on this service is also 29 days from San Francisco to Manila.

These two services provide on an average four sailings a month from San Francisco. From Seattle five vessels, known as 535's, are operated for account of the Shipping Board by the American Oriental Mail Line, with sailings every 12 days to Manila, via Yokohama, Kobe, Shanghai, Hongkong, the voyage requiring 24 days from Seattle to Manila, the voyage being shorter than from San Francisco.

All these vessels carry first-class passengers, and arrangements can be made for the transportation of troops in the present steerage quarters. The frequency of sailings whereby men and cargoes can be moved every few days in large or small numbers or quantities, eliminating the present necessity of gathering together a large body of troops or a large quantity of cargo to await shipment by a certain vessel on a certain date, would be supplied.

It is the policy of the United States as fixed by Congress that we shall do whatever may be necessary to develop and encourage the maintenance of a merchant marine. One of the best means of doing this is through the support which can be given by the Army and Navy in the use of commercial vessels for the transportation of officers and enlisted men and their families and supplies to ports or countries where we have established lines, either privately owned or Government owned.

The British merchant marine is strongly supported in this respect by the War Office and the Admiralty by using commercial steamers.

It is hoped that the War Department's needs and the aims of the Shipping Board in the promotion of an American merchant marine can be better coordinated in the interests of the Government.

Very truly yours,

T. V. O'CONNOR, *Chairman.*

(By special messenger)

DECEMBER 14, 1925.

Hon. HERBERT M. LORD,
Director of the Budget,
Washington, D. C.

MY DEAR GENERAL: I am informed that your office has requested the Shipping Board to turn over to the War Department for use as transports two of the five ships of the Admiral Oriental Line running from Puget Sound to the Orient.

You no doubt know that this is one of the most important lines established by the Shipping Board and that to take away two of these ships will greatly impair if it does not wholly destroy the usefulness of that line. The reasons and facts leading to this request must be most impelling ones and I will appreciate very much a statement of them as soon as possible.

Very respectfully yours,

W. L. JONES.

BUREAU OF THE BUDGET,
Washington, December 17, 1925.

HON. WESLEY L. JONES,
United States Senate.

MY DEAR SENATOR: I am in receipt of your note of December 14, concerning which we had an informal discussion at the White House yesterday. As stated then, the letter addressed by the chief coordinator, General Smither, to the Chairman of the United States Shipping Board was a suspended decision for the purpose of finally bringing to a definite conclusion something of a controversy relative to transports which had been carried on between the War Department and the Shipping Board for some little time. Since the submission of that letter General Smither has received a communication from the chairman of the United States Shipping Board, of which I have been furnished a copy, in which he presents a situation that would be created by a transfer of ships in kind and the inability to accept an alternative in the form of ship construction. On receipt of that letter the suspended decision was definitely withdrawn, the decision of the chairman of the Shipping Board being accepted as conclusive in the matter.

Very truly yours,

H. M. LORD, *Director.*

(By special messenger)

DECEMBER 14, 1925.

Hon. DWIGHT F. DAVIS,
Secretary of War, Washington, D. C.

MY DEAR MR. SECRETARY: I understand that your department has asked that two ships of the Admiral Oriental Line running from Puget Sound to the Orient be turned over to it for use as transports and that a request to this effect has been made to the Shipping Board by the Budget Office.

You no doubt know that this line is one of the most important established by the Shipping Board and that to take two of these five ships would greatly impair if not wholly destroy the line. The facts and reasons that led your department to make such a request must be most impelling. Surely nothing short of a national emergency would prompt a great department of the Government to seek to have done a thing that would affect as seriously the development of our commerce and our merchant marine as this would do.

I would appreciate it very much if you will advise me as soon as possible what the facts and reasons are that your department feels justify such action.

Very respectfully yours,

W. L. JONES.

WAR DEPARTMENT,
Washington, December 19, 1925.

The Hon. W. L. JONES,
United States Senate, Washington, D. C.

MY DEAR SENATOR JONES: I have your letter of December 14, 1925, asking the facts and reasons for the request of the War Department that two ships of the 535-foot Camden class be transferred by the United States Shipping Board to the War Department for use as transports.

In regard to this matter, I regret to state that the present equipment of Army transports on the Pacific Ocean for the run to Manila is rapidly becoming inadequate. This equipment consists of the transport *Thomas*, now 32 years of age, which will undoubtedly become unseaworthy in the near future due to her excessively long service, and the transport *U. S. Grant*, which is unsatisfactory due to the fact that her carrying capacity in passengers is not commensurate with the cost of operation. The *U. S. Grant* is also an old ship, having been built in 1907. Both of these vessels are coal burners and are very slow.

In September, 1918, a representative of the War Department appeared before the congressional committee for the first deficiency appropriation bill of 1919. This representative asked for $22,450,000 for the construction of an adequate fleet of transports for permanent use. Later a representative of the Shipping Board before the same committee was asked if the Shipping Board could build transports for the War Department. The representative of the Shipping Board stated that his organization could and would build transports for the War Department. He further stated that he considered it would be poor policy for two departments of the Government to be building transports at the same time. See hearings before Subcommittee of House Committee on Appropriations for first deficiency bill of 1919, pages 394 and 1322. As a result of the statements of the representative of the Shipping Board the $22,450,000 was not appropriated to the War Department, and the Shipping Board, which was then constructing eleven 535-foot Camden class ships, designated five of them as Army transports with the intention of completing the same as Army transports and turning them over to the War Department.

The appropriation for the Shipping Board in 1919, as shown on page 136 of the third annual report of that organization, was $2,846,701,000. The date set for the transfer to the War Department of five of the 535-foot Camden class ships as transports was January 1, 1920. The ships were not turned over on that date, nor have they ever been turned over. Equipment which was on hand together with that which could be obtained was made to suffice, but a situation is now arising due to the status of the present equipment on the Pacific run which will require that two of the 535-foot Camden class ships be transferred or that the Shipping Board take the necessary steps to procure two suitable ships for the War Department at an approximate cost of $6,000,000. This is not a new proposition. Repeated requests have been made by my predecessor since 1920 and every reasonable effort made to induce the Shipping Board to comply, at least in part, with its obligation, which was fully acknowledged by the director general of the Shipping Board.

The recent request of the War Department to the Shipping Board for two of these ships was first made in the form of a letter from the Quartermaster General to the chairman of the Shipping Board asking that the *American Legion* and *Southern Cross*, then operating on the Munson Line between New York and South America, be transferred. These two ships were asked for by name, due to the fact that they were known to be suited for tropical service. The request was refused by the chairman of the Shipping Board, who gave reasons for the same and offered the *Agamemnon* and *Mount Vernon* instead. The Quartermaster General declined the *Agamemnon* and *Mount Vernon*, due to their great size and the heavy expense necessary to place these ships in proper seaworthy condition as transports, also on account of the excessive cost of their operation.

This office then wrote a letter to the chief coordinator requesting the transfer of the *American Legion* and the *Southern Cross*, but in doing so stated that should these vessels not be available any other two of the same class would be satisfactory. The coordinator held a conference on the matter at which the Shipping Board and the War Department were represented. In the course of the conference the Shipping Board representative stated that for reasons connected with the increase of trade and commerce it would be impracticable to turn over the ships in question and again offered the *Agamemnon* and *Mount Vernon*. The Shipping Board representative was asked what he estimated it would cost to put the *Agamemnon* and *Mount Vernon* in condition as passenger ships and he replied $8,000,000 apiece, or possibly a little less. Such figures would, of course, be prohibitive to the War Department, even if the expense of operating these ships would not require the War Department to greatly increase its appropriations. The result of the conference was a recommendation on the part of the chief coordinator that the department send a representative before the Budget officer for the War Department and Congress with a request for $6,000,000 with which to supply two transports for Army use.

Shortly after the conference the four ships employed by the Munson Line were sold to that firm, which left seven of the 535-foot Camden class ships still under Government control. Five of these are operating from the west coast to the Orient and two are operating from New York to Europe under the direction of commercial firms.

This office has requested two or these seven ships and is very anxious to obtain them, as it would appear from statements above that five of these ships really belong to the War Department in accordance with the promise of the Shipping Board to Congress, made by their representative in September, 1918, and they may be considered to-day as being on the loan status to the Shipping Board.

The latest development in this case is the action taken by the chief coordinator in his letter of December 5, 1925, to the chairman of the Shipping Board, wherein his decision was expressed in the following language:

"That the Shipping Board restore to the War Department two of the 535-foot Camden class vessels originally constructed as transports with funds intended by Congress to be used for this purpose, or, if the restitution of these ships operates to disrupt materially the Shipping Board's liquidation program, that the board authorize the Emergency Fleet Corporation to proceed with the construction of two transports of a similar type to be turned over to the War Department when completed; the cost of the construction of these transports to be defrayed from Shipping Board funds, thus effecting a return to the War Department of a portion of $33,000,000 which was diverted from its appropriations on the representations referred to in the preface of this communication.

"In view of the magnitude and the far-reaching effects of the questions involved, the period of four days allowed for appeal from the decision of this office, as prescribed by paragraph 7 of the Executive order of November 8, 1921, is waived, and action under this decision is suspended to permit you a reasonable time to prepare any counter-argument which you may desire to submit for the action of superior authority."

I trust the above will give you the information desired and will serve to show that the War Department is only trying to secure a part of the equipment to which it is entitled and which is actually required for the proper performance of Government business.

Sincerely yours,

DWIGHT F. DAVIS,
Secretary of War.

TAX REDUCTION

Mr. HARRISON. Mr. President, I ask unanimous consent to have inserted in the RECORD a statement which was issued by the senior Senator from North Carolina [Mr. SIMMONS], the ranking member of the minority of the Finance Committee, published in the papers this morning, giving some of the views of the Democratic minority with respect to the tax reduction bill.

The VICE PRESIDENT. Without objection, it is so ordered.

Mr. SIMMONS subsequently said: This morning the Senator from Mississippi [Mr. HARRISON] presented to the Senate and asked for incorporation in the RECORD a statement made by myself as representing the minority members of the Finance Committee in regard to the attitude of those members with respect to certain phases of the so-called tax reduction bill passed by the House. I ask now as a part of the statement and to accompany it that there be published together with it a schedule which I now send to the desk of surtax rates proposed by the minority members of the committee in the nature of a substitute for the rates as contained in the bill passed by the House, and I also ask that the two statements be made a Senate document.

The PRESIDING OFFICER (Mr. JONES of Washington in the chair). Is there objection? The Chair hears none, and it is so ordered.

The statements are as follows:

Senator SIMMONS, ranking minority member of the Finance Committee, in giving out the following statement, said that the statement so given out by him represented the attitude of the minority only as to the items in the bill with which the statement deals, and that there are other important matters in the bill left to be dealt with as they are reached.

STATEMENT

The reductions in taxes proposed by the minority members of the Finance Committee will amount to approximately $500,000,000, and are as follows:

First. We propose reductions in income taxes of $44,000,000 in excess of those provided in the House bill.

We accept the normal tax rates, the personal exemptions, and the surtax rates provided in the House bill upon incomes up to and including $22,000.

But we do not accept the surtax rates in the House bill on incomes between $22,000 and $100,000, and propose with respect to these incomes to so adjust the brackets in the House bill as to provide for a reduction in the surtaxes of the incomes within these brackets of $44,000,000.

If this readjustment—in the interest of equalizing reductions made on incomes in excess of $22,000—is accepted by the committee or the Senate, the minority will accept the maximum surtax rate of 20 per cent as prescribed in the House bill.

The average reduction made in the House bill upon incomes between $10,000 and $20,000 is 25 per cent, upon incomes between $20,000 and $100,000 is 9 per cent, and upon the income in excess of $100,000 is 50 per cent.

The schedule proposed by the minority will provide for an average reduction upon incomes up to $20,000 of 25 per cent, upon incomes from $20,000 to $100,000 of 24 per cent, and on the income above $100,000 of 50 per cent.

Second. The repeal of the capital-stock tax upon corporations. This tax is peculiarly discriminatory against the weaker corporations, and, in addition, is distinctively a nuisance tax.

Third. The abolition of all taxes upon admissions and dues.

The basic question for consideration in connection with tax reduction relates to the amount of money which should be raised by Federal taxation annually for the purpose of reducing the indebtedness of the Government. Under the present law all moneys in the Treasury not specifically made applicable to some other purpose are applied to the reduction of the indebtedness. Under the bill as it comes from the House it is proposed to reduce taxation to the extent of about $325,000,000. If such reduction occurs, the amount applicable to payments upon the public indebtedness will be reduced by that amount.

Necessarily, therefore, we are called upon to consider primarily the amount of revenue which should be raised for the purpose of the reduction of the public debt. Under existing law provision is made for a cumulative sinking fund. In round numbers there is applied to the sinking fund from current Treasury receipts each year $253,000,000 and interest at an average of approximately 4 per cent upon all accumulated investments of the sinking fund.

The present indebtedness of the Government is approximately $20,400,000,000. If this sinking fund is maintained, as contemplated by the present law, it will liquidate the entire principal of the indebtedness of the country, whether represented by bonds, certificates, or other obligations in not more than 32 years. The minority believes that this sinking fund requirement, together with the interest charges, imposes annually upon the taxpayers of the country all the burden which should be borne by them in order to pay off the indebtedness.

Under the present law the $253,000,000 annually set apart as a sinking fund is raised by taxation and used for the retirement of our indebtedness; and in addition to that, the amount annually received (estimated for this year at more than $175,000,000) from our foreign debtors, is likewise applied to the retirement of our indebtedness.

The minority propose to apply to this sinking fund all receipts from foreign governments arising on account of their indebtedness, thereby reducing to the extent of these foreign payments the amount to be raised by taxation for purposes of the sinking fund.

This will enable the Government to pay off its entire indebtedness within 32 years and make provision at the present time for tax reduction of more than $500,000,000 per annum, instead of the reduction of $325,000,000 as proposed by the bill as it comes from the House.

Surtax upon certain net incomes

($20,000 earned income)

MARRIED MAN WITH NO DEPENDENTS

Net income	Surtax under— 1924 rates	Surtax under— H. R. 1 rates	Surtax under— Democratic rates	Per cent of reduction of H. R. 1 from 1924 tax	Per cent of reduction of Democratic rates from 1924 tax
$10,000	0	0	0		
$11,000	$10.00	$7.50	$7.50	25	25
$12,000	20.00	15.00	15.00	25	25
$13,000	30.00	22.50	22.50	25	25
$14,000	40.00	30.00	30.00	25	25
$15,000	60.00	45.00	45.00	25	25
$16,000	80.00	60.00	60.00	25	25
$18,000	140.00	105.00	105.00	25	25
$20,000	220.00	165.00	165.00	25	25
$22,000	320.00	265.00	265.00	17	17
$24,000	440.00	385.00	365.00	[1] 12½	[1] 17
$26,000	580.00	525.00	485.00	[1] 9	[1] 16
$28,000	740.00	685.00	605.00	[1] 7	[1] 18
$30,000	920.00	865.00	745.00	[1] 6	[1] 19
$32,000	1,120.00	1,065.00	885.00	[1] 5	[1] 21
$34,000	1,320.00	1,265.00	1,045.00	[1] 4	[1] 21
$36,000	1,540.00	1,485.00	1,205.00	[1] 3½	[1] 22
$38,000	1,780.00	1,725.00	1,385.00	[1] 3	[1] 22
$40,000	2,040.00	1,985.00	1,565.00	[1] 2¾	[1] 24
$45,000	2,730.00	2,665.00	2,075.00	[1] 2½	[1] 24
$50,000	3,540.00	3,405.00	2,645.00	[1] 3¾	[1] 25
$55,000	4,470.00	4,205.00	3,275.00	[1] 6	[1] 27
$60,000	5,480.00	5,005.00	3,975.00	[1] 8	[1] 28
$70,000	7,780.00	6,705.00	5,485.00	[1] 14	[1] 29
$80,000	10,480.00	8,505.00	7,125.00	[1] 19	[1] 32
$90,000	13,540.00	10,405.00	8,940.00	[1] 23	[1] 34
$100,000	17,020.00	12,305.00	10,765.00	[1] 28	[1] 37

[1] Average reduction, House bill, 9 per cent.
[2] Average reduction, Democratic bill, 24 per cent.
Percentage of reduction in surtax on all net incomes in excess of $100,000, approximately 50 per cent.

CALL OF THE ROLL

Mr. NORRIS obtained the floor.

Mr. CURTIS. Mr. President, will the Senator yield to me to suggest the absence of a quorum?

Mr. NORRIS. I yield to the Senator for that purpose.

Mr. CURTIS. I suggest the absence of a quorum.

The VICE PRESIDENT. The clerk will call the roll.

The legislative clerk called the roll, and the following Senators answered to their names:

Ashurst	Fess	Lenroot	Sheppard
Bayard	Fletcher	McKellar	Shipstead
Bingham	Frazier	McLean	Shortridge
Blease	George	McMaster	Simmons
Borah	Gerry	McNary	Smith
Bratton	Gillett	Mayfield	Smoot
Brookhart	Glass	Means	Stanfield
Broussard	Goff	Metcalf	Stephens
Bruce	Gooding	Moses	Swanson
Butler	Greene	Neely	Trammell
Capper	Hale	Norris	Tyson
Caraway	Harreld	Oddie	Underwood
Copeland	Harris	Overman	Wadsworth
Couzens	Harrison	Pepper	Walsh
Curtis	Heflin	Pine	Warren
Dale	Howell	Pittman	Watson
Deneen	Johnson	Ransdell	Weller
Dill	Jones, N. Mex.	Reed, Mo.	Wheeler
Edge	Jones, Wash.	Reed, Pa.	Williams
Edwards	Kendrick	Robinson, Ark.	Willis
Ernst	Keyes	Robinson, Ind.	
Fernald	King	Sackett	
Ferris	La Follette	Schall	

The VICE PRESIDENT. Eighty-nine Senators having answered to their names, a quorum is present.

FEDERAL AID TO STATES

Mr. BROOKHART. Mr. President, a few days ago I placed in the RECORD a statement with reference to Federal taxes

paid by various States and Federal aid received by those States. By some mistake or error my figures were transposed and I desire to have the statement inserted again for the purpose of correction.

The VICE PRESIDENT. Without objection, it is so ordered.

Mr. BROOKHART's corrected statement is as follows:

FEDERAL AID TO STATES

Mr. BROOKHART. Mr. President, on yesterday the junior Senator from Pennsylvania [Mr. REED] inserted in the RECORD certain figures showing the amount paid in Federal taxes by the different States and the amount of Federal aid received from the Government in road building and other matters. For a moment or two I desire to present a few figures in explanation of the conclusions he apparently would have drawn from his figures.

For instance, he shows that in Iowa we pay $13,554,243.98 in Federal taxes, and that we draw Federal aid of $2,206,055.97, or 16.28 per cent of the amount we pay. He shows that in Pennsylvania they pay $246,592,155.56, and that they draw in Federal aid $4,631,318.82, or 1.88 per cent. From those figures, of course, he seeks to draw the conclusion that there is a great injustice in the levying of the Federal taxes.

I want to call the attention of the Senate to a different kind of tax that is being levied upon Iowa, and upon all of the agricultural States for that matter. I only use Iowa as an example. That tax is the tax or charge of excess profits. I have here a bulletin from the Department of Commerce of estimated national wealth. The national wealth of the country in 1912 was $186,299,000,000. It increased to $320,803,000,000 in 1922, or about 70 per cent. If we figure that on the basis of compound interest it is about 5.5 per cent a year.

The State of Iowa produced more out of the soil than any other equal spot of ground in the world during that period, and if it had received a fair exchange of its products for the products of Pennsylvania and other profiteering States, it would have increased its wealth greater in proportion than any other State. Iowa's wealth increased from $7,708,000,000 to $10,511,000,000, or about 35 per cent on the basis of simple interest, or compounded at the rate of about 2.75 per cent a year. In other words, although Iowa produced more out of Mother Earth than any other spot it only increased in national wealth by one-half the percentage of the country at large.

We find that the great State of Pennsylvania increased in wealth from $16,225,000,000 to $28,833,000,000, or about 75 per cent. In other words, during the 10-year period referred to Iowa's wealth was $2,800,000,000 less than the average of the United States, and I maintain it ought to have exceeded the average, at any rate. That means that under the system of levying taxes by charging excess profits upon agriculture in the United States, Iowa paid a tax of $2,800,000,000 in 10 years, or $280,000,000 annually, in excess profits to the monopolies and industries, and that is more than the total amount the great State of Pennsylvania paid in Federal taxes.

Therefore, under this situation it seems to me that the idea of Federal aid is wrong. I do not believe that we should build roads by Federal aid. I believe the Federal Government should pay the entire bill and then we would have some chance to even up the excess that is taken from us by the profiteering sections of the country. I do not confine this to my own State. I have only used Iowa as an example. Almost every agricultural spot in the United States has been subjected to the same discrimination, including agriculture in the State of Pennsylvania.

Agriculture in Connecticut, I am informed, right now is practically bankrupt, and yet the wealth of Connecticut during this period increased at the rate of about 9 per cent a year, or nearly double the average of the increase of wealth of the whole United States. The figures that are put out to stop Federal taxation for the benefit of the whole people are based upon conclusions not sustained by the economic situation in the United States. Therefore, I want these facts in the RECORD at this time so that the other view may appear in contrast with the conclusion that might be drawn from the tables presented on yesterday by the Senator from Pennsylvania.

Mr. REED of Pennsylvania. Mr. President, will the Senator from Nebraska yield to me to ask the Senator from Iowa a question?

Mr. NORRIS. I yield, unless the Senator expects to get into a prolonged debate on something that is not now before the Senate.

Mr. REED of Pennsylvania. I will put it in a single question if I can do so.

The Senator from Iowa, in response to some figures I put in the RECORD with reference to Federal aid and Federal taxation of the separate States, raised the question recently that Iowa had not advanced as much in its aggregate net wealth in the last 10 years as had some of the Eastern States, thus justifying in his own mind this system of Federal aid. I would like to ask the Senator whether he has investigated the per capita wealth of Iowa as compared with Eastern States that he says should be compelled thus to contribute?

Mr. BROOKHART. Yes; I have. But the Senator has not fairly stated my proposition. Iowa not only did not advance as much in wealth, but produced more at the same time than the other States. The Eastern States' advance in wealth is in other lines than agriculture. Agriculture is oppressed in Pennsylvania and everywhere else just the same as it is in Iowa.

FEDERAL ESTATE TAX

Mr. BINGHAM. Mr. President, I ask unanimous consent to have printed in the RECORD an article by Franklin Carter, jr., entitled "A useless Federal estate tax," from the December, 1925, bulletin of the National Tax Association.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the December, 1925, Bulletin of the National Tax Association]

A USELESS FEDERAL ESTATE TAX

(Franklin Carter, jr., New York City)

The annual conference under the auspices of the National Tax Association, held at New Orleans, recessed on November 10 to enable the second national committee on inheritance taxation to make its report to delegates appointed from the several States.

The committee was appointed to draw up a plan with the idea of fostering uniformity of taxation in the various States, of providing for comity by reciprocal benefits and harmonious administration, of preventing the overlapping of taxation now existing, and of eliminating the unreasonable confiscation of part or the whole of decedents' estates which has so often happened under the existing laws. The report submitted on November 10 with searching ability has reviewed the important difficulties under our present State and Federal laws. The report is ingenious. It provides that the Federal estate tax shall be continued for a period of six years, and further provides that there shall be permitted as a credit upon the Federal estate tax an amount not exceeding 80 per cent of the Federal estate tax for inheritance and estate taxes paid to the various States.

There was evident opposition to the report, and inasmuch as the principal point of contention was with reference to the immediate repeal of the Federal estate tax, the first resolution which was introduced was a resolution favoring immediate repeal. The vote of the special delegates, by States, on this resolution was 16 to 12 against immediate repeal, and this expression was fostered by an earnest appeal on the part of the committee to support its scholarly and academic report and by a political and sentimental attack upon capital which from an economic viewpoint had no bearing upon the question. The prevailing impression was that the majority of those present were in favor of the immediate repeal of the Federal estate tax.

The following is the recorded vote on the first resolution, that the Federal estate tax should be immediately repealed, by the States represented:

Noes, 16: District of Columbia, Georgia, Illinois, Iowa, Kentucky, Missouri, New Jersey, New York, North Dakota, Ohio, Oklahoma, Oregon, South Dakota, South Carolina, Virginia, and Wisconsin.

Ayes, 12: Massachusetts, Michigan, Minnesota, Montana, New Hampshire, North Carolina, Pennsylvania, Rhode Island, Tennessee, Texas, Vermont, and West Virginia.

The vote upon the second resolution, which was to support the committee's report, was consequently carried by a reversal of votes.

If we analyze this report, it is obvious that its sole purpose is to hold a club over the several States, with the thought of compelling them to pass uniform estate or inheritance tax laws, and a perspective of present legislation in the various States does not indicate that it will in the slightest degree assist in this result.

On the floor of the conference the States which had no inheritance tax laws were severely criticized. Florida was even called insane for her present elimination of estate and income taxes. That Florida will find any need of receding from her present stand is doubtful. The freedom from income and estate taxes is but a small part of the allurement which has aroused the interest in Florida. The advent of wealth in Florida will, however, based upon moderate real property and personal property taxes, be sufficient many times over to carry the administration of Florida, and those who are familiar with conditions there know that there is little likelihood of her joining the ranks with some of her sister States which the report of the committee would seemingly like to compel her to do.

The passing of a resolution by a body of individuals that estate and inheritance taxes are sound taxes no more establishes this fact than an act of Congress determines that capital is income.

A review of the cases which support the Federal estate tax, which is now established as constitutional (see Knowlton v. Moore, 178 U. S. 417) is by no means satisfactory as determining the soundness of the tax. It has been generally accepted that such a tax by the Federal Government has been an emergency measure for war purposes or a result of war conditions, and the whole history of such a tax by the Federal Government has shown that when the emergency has ceased such a tax has been repealed. Fundamentally also there is a reasonable basis of argument against the application of such a tax, in that it is within the power of the States to permit the distribution of property by will, and that as the administrators of such property the right is peculiarly that of the States as opposed to the Federal Government, under the laws of which no such right is given. Whether inheritance or estate taxes imposed by States are sound or not, again becomes a question of fact, and while such taxes, when imposed, may be essential for the production of revenue to carry the administration of probate, surrogate's, and orphans' courts for the protection of property and the common welfare, nevertheless when such taxation produces an excess of revenue beyond the needs of such purposes it may become confiscatory of capital, and if confiscatory of capital it is certainly economically unsound. There is to-day no evidence that the revenue derived from the Federal estate tax is necessary.

Many States to-day have adopted a budget system of government, and some have attempted to establish a settled policy in taxation. Where an income-tax policy has been adopted it has been adopted in some cases in theory only and is not applied solely to annually recurring income but has also been applied to the profits received from the sale of property which has been held and accumulated in value over a period of years. It is unquestionably then in part a tax on capital. Nor has it yet been possible to eliminate in an income-tax State a tax on real estate, and in many States a personal-property tax still obtains. Consequently it is not inaccurate to say that neither the Federal Government nor any State has, as yet, adopted a settled and uniform policy of taxation.

Either the Federal estate tax is necessary or it is unnecessary. If it is not necessary, is it sound?

Its continuance means duplication of administrative expense for government; means a continuation and multiplication of Federal tax cases; means a delay in the administration and distribution of estates, and often, too, a forced sale of property at a loss in order to pay the taxes which are now required.

Under the proposed report of the national committee on inheritance taxation it is recommended that a credit up to 80 per cent of the Federal estate tax be allowed for State inheritance and estate taxes paid. In many instances this means a net yield to the Federal Government of 20 per cent only. Is the maintenance of the machinery of the Federal Government and the inconvenience to the country justified by the amount of revenue which would be thereby derived? There are rights which belong to the States. There are rights which belong to individuals. There are rights which belong to the dead and their successors. Such a measure proposes to slice from the decedent's estate, with no net gain to the Federal Government or to the States, a portion of his property as a penal measure upon States which do not fall in line. It reduces the family resources at a time when they are most needed.

The committee report is scholarly in its research, but its dominating idea shows that it is framed by theorists who have little or no conception of its practical application, and if there are those on the committee who have had any considerable experience in the handling of the Federal estate tax, it is evident that they have not been heard. The report from a practical viewpoint is not convincing, and from a political viewpoint is certainly questionable. Who is to gain by the adoption of such a measure? Not the Federal Government, since its net revenue, with reduced rates, is not increased and may not cover its administration of the estate tax. Not the States, because they obtain no increase in revenue by the adoption of such a measure. Not the administrator or executor, because all additional expenses are in any event charged against the estate. And every estate is, therefore, to contribute through Federal compulsion to a futile attempt to coerce other States. It would continue all the machinery of administration and collection of the estate tax to no one's good. It is pure economic waste. Why not repeal the Federal estate tax now?

ALUMINUM CO. OF AMERICA

Mr. REED of Pennsylvania. Mr. President, I ask unanimous consent to have printed in the RECORD an article appearing this morning in the New York American with regard to the investigation of the Aluminum Co. of America by the Federal Trade Commission.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the New York American, January 11, 1926]

UNFAIR TRADE METHODS FAIL TO MEASURE UP TO CHARGE—TRADE COMMISSION UNABLE TO SUBSTANTIATE COMPLAINT MADE AGAINST MELLON CONCERN—EVIDENCE WHICH SENATE CLAIMS WITHHELD WILL CLEAR ORGANIZATION WHEN TRIAL COMES UP

(By John A. Kennedy, Universal Service staff correspondent)

WASHINGTON, January 10.—After an exhaustive investigation covering more than 16 months the Federal Trade Commission finds itself unable to substantiate its own complaint that the Aluminum Co. of America is guilty of unfair business practices and will be so compelled to admit, it was learned from the commission to-day.

Not only is the commission unable to prove the charges alleged in a complaint issued in October, 1924, but in the opinion of its own investigators should give the Aluminum Co. of America a clean bill of health.

PROBE BASED ON REPORT

It is this complaint against the alleged aluminum trust that formed a basis for the present investigation by the Senate Judiciary Committee, now being prosecuted by Senator THOMAS WALSH, Democrat, of Montana.

It is contended by Democratic members of the Senate committee that in failing to prosecute the Aluminum Co. the Department of Justice ignored vital evidence obtained by the commission. They further contended at the hearing that the commission itself has refused to make available to the department certain incriminating documents.

Not only has the Federal Trade Commission been unable to find evidence upon which to convict the Aluminum Co. of illegal trade practices, but the very evidence which the Senators allege was withheld by the commission will, when made public, clear the company of the charges alleged in the complaint, Universal Service was informed by a high official of the commission to-day.

PROCEED WITH TRIAL

The Federal Trade Commission, however, will not dismiss the complaint in the present case, as is customary when it lacks evidence to support a charge. Instead it will go through with the trial so it can not be accused of "whitewashing" the Aluminum Co. because Secretary of the Treasury Mellon owns controlling stock interest, it was stated.

The majority of the commission prefers, in view of the furore in Congress, to present to the public all the facts it has been able to assemble through witnesses who will be called by both prosecution and defense when the case comes to trial four or five weeks hence.

The charges against the Aluminum Co. of America now before the Federal Trade Commission were originally filed by the Edward G. Budd Manufacturing Co., of Philadelphia, it was learned to-day.

The Budd Co., the evidence alleges, entered into a contract with the Aluminum Co. of America for delivery of a certain quality of sheet aluminum to be used in making automobile bodies.

CONTRACT DISAGREEMENT

A condition of the contract, agreed upon by both parties, was that in return for certain price concessions the Budd Co. was to return all scrap aluminum left from each sheet to the Aluminum Co.

Later the two concerns came to loggerheads, it is alleged, over the meaning of certain terms of the contract as to precisely what constituted scrap that should be returned.

Shortly thereafter, according to the commission's investigators, the Budd Co. made complaint to the Federal Trade Commission that the Aluminum Co. was forcing all of its customers to return all scrap.

After reviewing the complaint, examiners for the commission referred it to the board of review, and it finally reached Commissioner Van Fleet.

Upon the principle that if the Aluminum Co. was forcing all its customers to enter into contracts similar to the one it had with the Budd Co., it was engaged in unfair business practices, Commissioner Van Fleet, it is said, ruled that a formal complaint should be filed.

OTHER COMPLAINTS FOLLOW

While the complaint filed by the Budd Co. was the basis of the case, other complaints were made against the Aluminum Co. by various manufacturing and selling agencies in the aluminum field.

Investigators were sent to check all the evidence that could be found from every source. The results of their findings, now practically complete, are in the hands of the lawyers who will prosecute the case for the commission.

Although the investigators have done their utmost, the evidence they have been able to find is not sufficient to support the case, one official stated to-day.

Even the companies which made complaints to the Federal Trade Commission, it developed, were unable to help the commission support

its charges, it was explained to-day. Many such concerns had apparently suffered a change of heart as regards the practices of the Aluminum Co., it was asserted.

In some quarters it was suggested that even the Budd Co., which filed the original complaint, is now on friendly terms with the Aluminum Co.

During investigations in 1923 and early in 1924 the commission found that corporations were becoming more and more reticent about giving voluntary access to books and files.

Some corporations argued that when the commission was given permission to look over its books the information thus obtained immediately reached the Department of Justice and caused them trouble.

If the Department of Justice wanted information from their books, these corporations contended it had a perfectly legal way to obtain it by swearing out subpœnas.

In the summer of 1924 this problem became even more acute with the result that in February, 1925, a rule was voted whereby the commission agreed to hold information given voluntarily in confidence.

SECRETS GUARDED

The aluminum case was the first affected by this ruling. When the Department of Justice called for certain documents that had been delivered in confidence to the commission by the Aluminum Co., it was informed that the commission would be glad to comply, provided permission was first obtained from the company. It had not the smallest doubt that such permission would readily be given as the information obtained in the desired documents is understood to be largely in favor of the company.

A few weeks ago, it was pointed out, when the Department of Justice started an investigation of the alleged Bread Trust, the commission was in precisely the same position with regard to certain files of the Continental Baking Corporation.

As in the case of the Aluminum Co. the commission suggested that if the department would wire the baking corporation for permission to see the files, the request would be granted.

On that occasion the department did as suggested and obtained the files.

The Senate committee will resume the aluminum investigation Tuesday.

Mr. WALSH. Mr. President, this morning the Senator from Pennsylvania [Mr. REED] had inserted in the RECORD an article from the New York American concerning the investigation of the Aluminum Co. of America. The letter inextricably confuses two entirely different matters and leads to a very erroneous conclusion concerning the situation of affairs.

I ask unanimous consent to have printed in the RECORD, with the article referred to, an editorial appearing in the New York Journal of Commerce of to-day upon the same subject.

There being no objection, the matter referred to was ordered to be printed in the RECORD, as follows:

[From the New York Journal of Commerce, January 11, 1926]

"I DO NOT KNOW"

The present-day politician who assumes with blithe or unconscious ignorance the duties of a high office runs grave risks. With increasing frequency he finds himself the victim of the cruel but no longer unusual punishment of having to reveal his lack of knowledge to special investigators who revel in extracting admissions of ignorance while presumably delving for facts.

Inquiry by the Senate Judiciary Committee into the affairs of the Aluminum Trust has begun most inauspiciously for the new Attorney General, *whose testimony so far can be compressed into one briefly inclusive answer: "I do not know."* The result of this method of approach is that public interest is likely to be deflected from the affairs of the Aluminum Trust to a probe of the competency of the Attorney General. Since a Cabinet officer is primarily a political appointee who may, but more frequently does not, know and often never learns much about the technical details of departmental business, it is a very serious matter to subject him to the ordeal of public examination. How far then is a congressional investigating committee warranted in pushing its inquiries after it has become evident that it will elicit nothing beyond the words, "I do not know"?

Is there any way of distinguishing between what an Attorney General ought to know and what he may properly leave to the regular departmental wheel horses as a matter of day-to-day routine? *At least it can be expected that the head of the Department of Justice will have a clear conception of its general policies, will know something about the progress that has been made in the prosecution of important cases, and will hold an opinion concerning his legal right to obtain pertinent information from the Federal Trade Commission.*

Unfortunately, the evidence appears to show that the Attorney General is *devoid of a point of view as well as destitute of a knowledge of facts.* He might be forgiven for not having plodded through detailed data regarding the Aluminum Trust, although with an investigation in prospect ordinary prudence would have dictated a little overtime work. It is less easy to understand why he does not know if, when, or how much evidence has been obtained upon request from the Federal Trade Commission or whether any correspondence has passed between the two departments since he took office.

Confronted with a resolution of the Trade Commission, which voted not to permit an inspection of evidence obtained from the Aluminum Co. of America, the Attorney General again professed not to know whether he could legally force production of this evidence. Indeed, he indicated a certain sympathy with the commission's action on the ground that the success of its efforts to find out about trade conditions depended upon guarding material confidentially obtained. In answer to this argument the Attorney General's attention was called to the fact that the Trade Commission's resolution did not embody an interpretative reservation. Furthermore, if collection of evidence involves subsequent refusal to reveal it, the question arises, Why gather it at all?

On general matters, such as those covered by the Judiciary Committee in its examination of the Attorney General, *a plea of ignorance is equivalent to a confession of incompetency, unless it is to be assumed that it is a deliberate device to cover a masterly program of inaction. Under the circumstances the Judiciary Committee can only proceed swiftly with its work of questioning those subordinates to whom the actual work has been left.* Their departmental head says he is sure they are laboring diligently.

SENATOR FROM NORTH DAKOTA

The Senate resumed the consideration of the following resolution (S. Res. 104) reported from the Committee on Privileges and Elections:

Resolved, That GERALD P. NYE is not entitled to a seat in the Senate of the United States as a Senator from the State of North Dakota.

Mr. NORRIS. Mr. President, I desire, if I can, to clear away from the senatorial atmosphere some of the technical legal objections that have been made to the admission of Mr. NYE as a Senator from North Dakota. Before I proceed with a short analysis of what I believe to be the law that should govern in this case, I want the Senate to understand my viewpoint, a viewpoint which I shall try to convince the Senate it ought to take in passing on this very important question.

We have knocking at our doors a man armed with credentials from the Governor of North Dakota appointing him to fill a temporary vacancy until the electors of North Dakota shall fill such vacancy by an election. We are not trying a criminal; we are not dealing with technical, hair splitting legal objections. We ought, as I shall try to show, to consider the question in the broadest kind of light. There is no question here of fraud; there is no question here of deceit or deception; there is no question of bad faith. Everything that has been done by the State of North Dakota has been done openly and above board, in the face of the entire world.

There is no question about the qualifications of the man who is here knocking for admission. No crime is charged; no intentional violation of duty is charged against anyone. It is conceded by all that every step has been taken in best of faith, honestly and fairly, in the open light of day.

It has been said, and it is admitted, I think, that government abhors a vacancy in public office, and if, by any fair construction, the vacancy can be filled by such construction, it is the duty of the court or of the body passing upon the question to give the construction that will fill the vacancy. I take it that it will not be denied that the law that should govern us now is that if, when we shall have considered all phases of the contest we should be in doubt as to how we should vote, we should resolve that doubt in favor of the admission of Mr. NYE to this body. I do not believe that will be disputed.

We must remember also in considering this case that every objection that has been made against Mr. NYE's admission is a technical legal objection.

Mr. SHORTRIDGE. Mr. President——

The VICE PRESIDENT. Does the Senator from Nebraska yield to the Senator from California?

Mr. NORRIS. I yield to the Senator.

Mr. SHORTRIDGE. Before the Senator proceeds further, will he have the goodness to give his definition of a technical objection?

Mr. NORRIS. I am going to do it before I get through, but I will give the Senator a sample of a technical objection now. A technical objection was made by the Senator from West Virginia [Mr. GOFF] in the opening of this debate. By the way, I think the Senator made a very able, exhaustive, and

comprehensive argument. However, he made the lawyer's argument for his client. All the way through that long and able address he called our attention to legal technicalities. I will cite one. He referred to the Blount case, which I am going to take up before I get through if I shall not forget it, and casually remarked that that case was 100 years old; but in a very few minutes he was citing the opinions of lawyers which were given more than 100 years ago—they were very able opinions, I concede—that a Senator is a Federal officer. The Senator from West Virginia then weighted down that argument with the statement that these opinions were given by men 100 years ago, when it must be conceded that the adoption of the Constitution of the United States was fresh in the minds not only of themselves but of the people. That is an attempt, it seems to me, to take a technical advantage against Mr. NYE. The Blount case, 100 years old, which was decided in the same light in which the other opinions were given is not to be allowed very serious weight because it is too old; but the opinions given at the time of the Blount case was decided by men who were opposed to the decision rendered then by the Senate, are entitled to weight because they were almost contemporaneous with the adoption of the Constitution. You can take your choice of the arguments.

Going back now, Mr. President, I believe I was about to read from the Constitution, bearing out as I think it does, my statement that we ought to give a liberal construction favorable to the filling of this office when we pass upon this question. Section 5 of Article I of the Constitution so far as it applies here reads as follows:

> Each house—

That is, speaking of the Senate and the House of Representatives, so that it means the Senate and the House of Representatives—

> Each House shall be the judge of the elections, returns, and qualification of its own Members.

What is the object of that? I take it that our fathers gave to this body the right finally to pass upon these questions without appeal to any court, to any technical judicial tribunal, in order to afford the Senate the greatest possible freedom in passing upon them, and that, therefore, we were given by constitutional provision almost a command to the effect that in passing upon the qualifications of our Members our latitude should be wide, our consideration should be broad, and we should pass upon them without regard to technicalities such as any lawyer in a case before a court might be able to find in conflicting opinions.

What happened here? First we adopted the seventeenth amendment. For what does it provide? For the election of Senators by the people; second, for the election of Senators to fill vacancies; third, for the temporary appointment of persons to fill vacancies in the senatorial office until the people can elect. North Dakota has done all that, not perhaps in the way that the technical lawyer would say it ought to be done, but in good faith, for concededly in good faith she has taken everyone of those steps. The vacancy occurred; the governor has called a special election; he has appointed a man temporarily to fill the vacancy until the result of that special election shall be known. Nobody denies that; that is conceded by all. Has not North Dakota, therefore, in every way complied with the spirit of the seventeenth amendment? If a lawyer by hair-splitting technicalities can show you where a "t" has not been crossed or an "i" dotted, are you going, with the liberal powers which the Constitution gives you, to say that the voice of North Dakota shall be silent and her representative shall be excluded from the Chamber? I repeat, North Dakota has taken every single step contemplated by the seventeenth amendment.

Let me read another provision of the Constitution, in so far as I think it applies here. I read the very last sentence of Article V of the Constitution:

> No State, without its consent, shall be deprived of its equal suffrage in the Senate.

Has North Dakota consented that she shall be deprived of her equal representation? Although she may not have satisfied the ideas of some as to the way she should proceed, has she not concededly in good faith tried to carry out every provision of the seventeenth amendment; and, having done that, are we going to say now, in the face of the Constitution of the United States, that she shall be deprived of her representation here without her consent? It seems to me, Mr. President, that if we will do our duty as the Constitution of the United States has given us authority to do it we must resolve every substantial doubt in the procedure in favor of giving North Dakota representation here. She has taken every step provided for by the seventeenth amendment; she has done it honestly and aboveboard. There is no question but what she has done it; everybody admits it, and the Constitution says we shall not deprive her of representation here unless she consents to it. Every step that she or any of her officials have taken shows conclusively, without contradiction, that she has tried her best to comply with the seventeenth amendment. She has done it in her own way, in the best of faith, and her representative is now knocking at our door.

Let me say I am not here claiming that this question is free from doubt, if one wants to be technical about it. I *am not* going to decide whether a Senator is a State officer or a Federal officer. I confess that I am in doubt about it. I think there is not any question, if we want to be fair with each other, that the Supreme Court of the United States has held both ways. A decision can be found to back up either proposition. That very fact brings to my mind a sufficient reason why I should vote for the admission of Mr. NYE to this body. When the Supreme Court is in doubt and when able Members of the Senate are in doubt, ought it not create a doubt in the ordinary lay mind as to what is technically right? But when technicalities are brushed aside there remains no doubt.

In the Burton case the Supreme Court in its decision, so far as the opinion applies here—and the opinion was rendered, as I remember, by Associate Justice Harlan, one of the ablest men who ever sat on the Supreme Bench—said:

> While the Senate, as a branch of the legislative department, owes its existence to the Constitution, and participates in passing laws that concern the entire country, its Members are chosen by the State legislatures and can not properly be said to hold their places under the Government of the United States.

I know that the technical lawyer says that for that particular purpose the Supreme Court held that Senator Burton was not a civil officer of the United States, and I will not quarrel with that technical conclusion. I do not care. To my mind it is a rather fair statement by the Supreme Court that a United States Senator is a State officer. I am aware that in the Lamar case they decided the other way; and yet the technical lawyer says that in the Lamar case it was held that for the purpose of the statute in that case, which provided a penalty for impersonating a Federal officer, he was a Federal officer. I read an opinion some time ago from a lawyer for whom I have the greatest respect, analyzing those two opinions, and he said they do not controvert each other. We reach the conclusion from them that a Senator for some purposes may be a State officer, and for other purposes may be a Federal officer.

I am not going over the proposition that our salaries are paid by the Federal Government, that we labor here for the entire country instead of a State, nor am I going to take up the other side and say that a Senator is elected by the people of a State, that he is an ambassador of the people of a State, that he resigns—if he resigns—to the governor of a State, and never notifies the Federal Government of it, the Federal Government not necessarily having any notice of the vacancy, but the notice of the vacancy going to the State. All those are arguments on each side. The point I want to make, Senators, is that while that question is clothed in serious doubt, it is our duty to resolve that doubt in favor of the admission of Mr. NYE from North Dakota.

I think it is fair to state that the Supreme Court has held both ways. I am not quarreling, however, with the lawyer who says that the Supreme Court ultimately may definitely say that for some purposes a Senator is a State officer and for some purposes he is not a State officer but is a Federal officer.

Mr. SWANSON. Mr. President——

The VICE PRESIDENT. Does the Senator from Nebraska yield to the Senator from Virginia?

Mr. NORRIS. I do.

Mr. SWANSON. While the Senator is discussing the Burton case I desire to observe that the Supreme Court certainly decided in the Burton case that as Senator Burton was elected by the legislature he derived his authority from the State, and to that extent was a State officer. Now, here the governor makes the appointment. The governor is as much State authority as the legislature of a State, is he not?

Mr. NORRIS. Yes.

Mr. SWANSON. Therefore, regarding the appointment of the governor, if the Burton case stands as the opinion of the Supreme Court, when the appointment is made by the governor of a State he is appointing the Senator by State authority the

same as Senator Burton was elected by State authority, namely, the legislature, and consequently he is a State officer.

Mr. NORRIS. I should say that, even though we conceded that for some purposes a Senator might be a Federal officer, when the Burton case says that on account of his election for that purpose he is a State officer certainly it would apply here, although in this case we are dealing with an appointment instead of an election, the authority coming from the same source, namely, the State.

If a Senator is a State officer, then the governor had absolute authority to appoint Mr. NYE. I do not believe anybody can seriously question that, although in the technical argument made by the eloquent Senator from West Virginia [Mr. GOFF] he did question it. I am not even going to stop to argue the matter. It seems to me too hairsplitting a technicality to take the time of the Senate to discuss. The law of North Dakota, passed by the Legislature of North Dakota after the enactment of the seventeenth amendment, provided that the governor had a right to fill the vacancy by appointment. The language used was that he should have that power in State and district offices.

Take that particular provision of the law, which is part of section 696—look at the title of that act—see what it says and see if that will not throw some light on the matter. At that time, under the Constitution of the United States, if the legislature provided the necessary legislation, the governor did have authority to fill these vacancies by appointment. That law was passed in 1907, and its title reads:

SEC. 696. Vacancies, how filled: All vacancies except in the office—

And so forth.

You will observe that it says "all vacancies." All vacancies that might occur, that by any construction of law the governor had the right to fill, he is given authority to fill. That it is important to consider the intention of North Dakota in getting this matter settled properly there is no doubt, I think. North Dakota, by initiating a law that was passed and is now on the statute books of that State, provided for the recall of Members of the Senate and Members of the House of Representatives.

Every citizen of North Dakota must know that that State can not recall an officer if he is not a State officer. No one will contend otherwise, and when North Dakota deliberately passed a law that provided for the recall of Senators there is not any doubt in my mind that North Dakota believed that a Senator was a State officer.

It is not necessary that we agree with North Dakota, as I said, but even those who are opposed to the admission of Mr. NYE concede that the intention of North Dakota is an important thing to consider in giving a proper construction to the law. Let me pause here to say that according to my idea of the construction of laws and statutes, where a law is plain on its face and admits of only one construction you can not go behind the law to get the intention of the legislature or of the people who enacted it, but where there is any doubt as to what it means or what the intention of the law-making body was, then it is always proper to consider what they had in mind and what was their real intention, and I concede very frankly that there is doubt about this law.

Mr. President, on that question I am going to discuss a portion of the constitution of North Dakota.

Section 78 of the constitution of North Dakota reads as follows:

When any office—

Remember, it says "any office"—

shall from any cause—

Remember, again, that it says "from any cause"—

When any office shall from any cause become vacant, and no mode is provided by the constitution or law for filling such vacancy, the governor shall have power to fill such vacancy by appointment.

That provision of the constitution was enacted long before the seventeenth amendment. It was not enacted, however, before there was a live question as to changing the Constitution of the United States so as to provide for the election of Senators by a vote of the people. It is not any stretch of the imagination to say that it was enacted in anticipation of that law, and the Senator from West Virginia [Mr. NEELY] has put into the RECORD opinions from the Supreme Court of Texas and the Supreme Court of Connecticut, where statutes were passed prior to and in anticipation of constitutional amendments and afterwards held to be valid. I think no lawyer will say that that is not good law; that it is perfectly competent for a legislature to pass laws in anticipation of a change in the constitution of the State. The laws will be of no effect, of course, unless and until the constitution is changed so as to give them effect.

The Senator from West Virginia [Mr. GOFF], however, in arguing this constitutional provision of the State of North Dakota, passed it by with a rather flippant attitude, and said:

Oh, that was passed long before the adoption of the seventeenth amendment.

Let us see whether that should be even a technical argument that it is not entitled to consideration.

Suppose that after the adoption of this amendment the legislature should provide for an officer that was not provided for in the constitution—suppose we say a State superintendent of public schools—and they should have an election and elect a man to fill the office according to the statute, and that after his election and installation in his office he should die. Is there any person who would doubt but that the governor could appoint his successor if the legislature had not made any provision for such an appointment? I do not believe that anybody will contend that for a single moment.

Suppose, as actually happened in one of the States with which I am familiar, a legislature provided by law for a new county officer, a register of deeds. Prior to that the work that was given to the register of deeds in the new act was performed by the county clerk; and they separated the duties of the county clerk, and provided for a new officer that was called a register of deeds. Suppose that should occur in North Dakota, with that provision of the constitution in force, and suppose the legislature in providing for this new officer had failed to make any provision about the filling of a vacancy in case of resignation, death, or removal, and suppose after a register of deeds had been elected and installed in office he resigned. Is there anyone who would question the authority of the governor to make an appointment to fill the vacancy? I do not believe anyone can question it. It is as broad as human language can be made. The provision is that all vacancies from any cause, where not provided for by law, shall be filled by the governor.

Now, I am going to take up, Mr. President, on the question of a Senator being a Federal or a State officer, the action of the United States Senate. As I read it, the Senate has definitely passed upon this exact case. I can see no escape from it.

Mr. Blount was a Senator from Tennessee. He was impeached by the House of Representatives, and the impeachment proceedings were sent over here, and the Senate was sworn in as a court to try him. When they got ready for trial his attorneys filed this plea questioning the jurisdiction of the Senate, which was then acting as a court to try Mr. Blount. This was the language of the demurrer, as perhaps it might be called:

That although true it is that he, the said William Blount, was a Senator of the United States from the State of Tennessee at the several periods in said articles of impeachment referred to, yet that he, the said William, is not now a Senator, and is not, nor was he at the several periods so as aforesaid referred to, an officer of the United States; nor is he, the said William, in and by the said articles charged with having committed any crime or misdemeanor in the execution of any civil office held under the United States, or with any malconduct in civil office or abuse of any public trust in the execution thereof.

You will notice, Senators, that there are two objections included in that plea. One of them is that at the time of the trial he was not a Senator, and he was not. The other one is that at the time he committed the acts referred to he was a Senator, but that he was not a civil officer of the United States.

The first objection was given no weight then, and has never been given any weight in any impeachment trial. It is universally conceded, I think, that an officer subject to impeachment can not avoid an impeachment trial by resigning from office. I do not believe anybody disputes that. It was not disputed in the Blount case, as I understand it. It was admitted by his attorneys, as the record shows, I believe, that they did not rely upon that proposition, and it was certainly admitted by the resolution, which they submitted after this plea had been debated. The only contention was that as a Senator he was not officer of the United States, but a State officer.

At the close of the debate the managers on the part of the House submitted this motion:

That William Blount was a civil officer of the United States, within the meaning of the Constitution of the United States, and, therefore, liable to be impeached by the House of Representatives.

That as the articles of impeachment charge him with high crimes and misdemeanors, supposed to have been committed while he was a Senator of the United States, his plea ought to be overruled.

That motion, submitted by the managers on the part of the House, contained only one provision, in effect, which was that he was a Senator, and therefore a civil officer of the United States and subject to impeachment. The Senate voted that resolution down. They decided by their votes to the contrary. Then the defense submitted a resolution, which was agreed to. But before I read that let me pause to say this, that when the Senate passed on the Blount case, the Members of the Senate took a special oath. Every Senator who passed on it raised his hand and swore that he would pass on it as a member of a court. The Senators sitting in that case had a greater obligation even than the one we have. Their decision was the most solemn verdict that could possibly be rendered by the Senate, because it was rendered under a special oath for that particular proceeding.

This resolution was offered by Mr. Blount's attorneys:

The court—

Meaning the Senate—

The court is of the opinion that the matter alleged in the plea of the defendant is sufficient in law to show that this court ought not to hold jurisdiction of the said impeachment and that the said impeachment is dismissed.

That resolution was agreed to by the Senate. As far as I know, that is the only time the Senate ever passed on this question, and as I read the English language, the question they passed on then was, as a lawyer would say, on all fours with the question now before the Senate.

Does that raise a doubt in any man's mind? With the record of the Supreme Court before us, and keeping in mind the decision of the Senate sitting as a court under a special oath, holding that a Senator is not a Federal officer, can any Senator say now that he has a doubt in his mind, especially when we are to take a broad, comprehensive, nontechnical view of the entire field? If there is a doubt left, then it is the duty of the Senate to resolve it in favor of Mr. NYE.

Mr. President, there is another question that has been debated I think by every Senator who has made an argument opposing the admission of Mr. NYE to the Senate, and that comes from the peculiar reading of the seventeenth amendment. The part of it applying here reads as follows:

When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancy.

Observe the word "shall."

Provided, That the legislature of any State may empower the executive thereof to make temporary appointment until the people fill the vacancies by election as the legislature may direct.

It is argued by the Senator from West Virginia, the Senator from Montana, and the Senator from Georgia, all able lawyers, that the temporary appointment referred to there does not mean the same as a vacancy, and that authority given a governor to fill a vacancy, under the law or the Constitution, is not sufficiently comprehensive to give him authority to make a temporary appointment until the electors decide who shall be the Senator. I think that is entirely too technical, but it is argued by these able lawyers, as I understand it, that that provision standing alone is enough to keep Mr. NYE from being admitted here. While I do not believe that, while I think it is almost a hair-splitting technicality, I want to carry that home to the Senate. I want to call attention to what it would mean if we should exclude Mr. NYE on that technicality.

Let us take the case of the Senator from Massachusetts [Mr. BUTLER]; and I am sorry he is not present now. He holds a place here by appointment from the Governor of Massachusetts upon a provision of the statute of Massachusetts, which reads:

Upon failure to choose a Senator in Congress or upon a vacancy in said office, the vacancy shall be filled for the unexpired term at the following biennial State election; providing said vacancy occurs not less than 60 days prior to the date of the primaries for nominating candidates to be voted for at said election, otherwise at the biennial State election next following. Pending such election the governor shall make a temporary appointment to fill the vacancy, and the person so appointed shall serve until the election and qualification of the person duly elected to fill such vacancy.

There was no calling of a special election there by the governor as provided for in the seventeenth amendment, and if this objection to Mr. NYE is valid, then the Senator from Massachusetts [Mr. BUTLER] has been holding his office ever since he has been here without authority of law and in violation of the Constitution of the United States. You can not escape that conclusion. If we are to keep North Dakota out, then if we are consistent—and I think we all want to be—we must put Massachusetts out with her, put her out in the cold just the same, and provide for the return to the Treasury of the United States of all the salary the Senator from Massachusetts has drawn as Senator up to this time.

In fact, North Dakota has done more than Massachusetts did. It is conceded that the Governor of North Dakota has called a special election.

Mr. REED of Missouri. Mr. President——

The VICE PRESIDENT. Does the Senator from Nebraska yield to the Senator from Missouri?

Mr. NORRIS. I yield.

Mr. REED of Missouri. Unfortunately I was called from the Chamber when the Senator started to make the particular statement he has just concluded. What is it the Senator claims with reference to the election of Senator BUTLER and Mr. NYE? I understood the Senator to say that those two gentlemen had been chosen in the same way and were sitting here with the same sort of credentials.

Mr. HEFLIN. There are three of them, if the Senator will pardon me—the Senator from Massachusetts [Mr. BUTLER], the Senator from Missouri [Mr. WILLIAMS], and the Senator from Indiana [Mr. ROBINSON].

Mr. NORRIS. Yes; there are three. So that the Senator from Missouri and other Senators may understand me, I am not claiming that the objection to which I just referred is the only one made against Mr. NYE, but this objection has been made by those who have argued against his admission, particularly the Senator from West Virginia [Mr. GOFF], the Senator from Georgia [Mr. GEORGE], and the Senator from Montana [Mr. WALSH]. They have all argued that because of the particular weakness I have pointed out, Mr. NYE can not be admitted; that if there were no other objections made——

Mr. REED of Missouri. What is the objection the Senator is discussing? I was out of the Chamber, and I beg pardon for interrupting and will not persist, but I wanted to understand the Senator.

Mr. SMITH. I suggest that the Senator from Nebraska repeat his parallel between the Massachusetts and the North Dakota cases.

Mr. NORRIS. The authority for the appointment of Mr. NYE comes either from the constitutional provision or the legislative provision, or both, and in each case there is provision for the filling of vacancies. The seventeenth amendment provides that when there is a vacancy the governor shall issue a writ for a special election, and his authority to appoint is confined only to the period between the date of the appointment and the filling of the place by the special election. It is claimed that even though the Governor of North Dakota did call a special election, the law by virtue of which he made the appointment did not contemplate a special election, and therefore it is just the same as though no special election had been called, and that the Federal Constitution does not give the authority to appoint to fill a vacancy, but provides only for a temporary appointment to be held until the legislature shall provide for the filling of the vacancy.

The point I am making is this, that in Massachusetts the governor did not call a special election. The governor did there just exactly what Senators opposed to the admission of Mr. NYE have condemned as fatal to the credentials of Mr. NYE. So I say that if that is sufficient to keep Mr. NYE out it is sufficient to keep out the Senator from Massachusetts; and it is sufficient to keep out the colleague of the Senator from Missouri, since a special election was not called in that State; and I am informed by the Senator from Alabama that the same applies to the Senator appointed by the Governor of Indiana. The Senator informs me that there was no special election in that case, although I have not looked into the case.

Mr. NEELY. Mr. President, will the Senator yield?

Mr. NORRIS. I yield.

Mr. NEELY. May I invite the Senator's attention to a fact, which I emphasized in my address to the Senate on Friday, that the shortest term that has been given to anyone appointed to fill a temporary vacancy since the adoption of the

seventeenth amendment is the term that has been given to Mr. NYE. The term given to the Senator from Massachusetts [Mr. BUTLER] lacks only 11 days of being a two-year term. The term given to the distinguished Senator from Indiana [Mr. ROBINSON] is until the election in November, 1926, a term of approximately a full year. The term given to the Senator from Missouri [Mr. WILLIAMS] is longer than that given to Mr. NYE. Mr. NYE's term is for but 7 months and 16 days, the shortest term that has been given to anyone appointed to the Senate since the seventeenth amendment was adopted.

Mr. NORRIS. Mr. President, as I said before, I think it is no answer to this argument to say that there are other objections to the admission of Mr. NYE besides this one. It is contended by those who urged this objection that it is sufficient in and of itself to keep him out; and it is immaterial if there are other reasons, anyone is sufficient. If that be true, taking their argument at a hundred per cent, then is the Senate of the United States going to say that Mr. NYE shall be kept out—and admit these other Senators—when it is argued that that is a sufficient reason of itself?

I would like to inquire of the three Senators to whom reference has been made—from Massachusetts, from Missouri, and from Indiana—whether they are going to vote on this question. They hold seats here, I believe properly; I am not making any criticism of any of them, but I am only bringing this argument where it logically must go and showing the Senate to what it will bind itself if it keeps Mr. NYE out. Do those Senators think they are qualified to cast a vote when their own title is involved in the very proposition they are to vote upon?

Mr. WILLIAMS. Mr. President, I feel that I am entitled to vote on this question, because I am here under an oath to support the Constitution of the United States.

Mr. NORRIS. Everybody has taken that oath. If we keep Mr. NYE out on this technicality, we are keeping him out under the Constitution of the United States. It would be keeping him out on the argument that the Constitution of the United States has been violated. If we are violating the Constitution in keeping him out, then we are violating the Constitution in keeping the other Senators in. Without any personal feeling, because everybody knows that I believe in the other view, I want to give notice now that I shall challenge the vote of those three Senators when we come to vote on this proposition, and let the Senate decide whether we will make fish of one and fowl of the other.

Mr. WALSH. Mr. President, my attention was diverted. I did not quite follow the argument of the Senator to the effect that the other Senators whom he named stand on exactly the same basis as Mr. NYE.

Mr. NORRIS. In so far as this one objection is concerned.

Mr. WALSH. What is the particular objection?

Mr. NORRIS. I have gone over it twice already. I do not think the Senator will ask me to go over it again. I understand the Senator himself has expressed the opinion that on the argument in regard to a vacancy it applies to the Senator from Massachusetts [Mr. BUTLER] with equal force as to Mr. NYE. Am I right in that assumption?

Mr. WALSH. I did not urge that point against Mr. NYE, and it did not occur to me that it had any application to the case of Mr. NYE.

Mr. NORRIS. I said that the Senator did. The Senator says that he did not. I apologize to him for the statement. I thought the Senator did make that argument. Although I did not hear it, I was told that he had. But the Senator does remember, perhaps, the argument of the Senator from West Virginia on that score, and he does remember the argument of the Senator from Georgia [Mr. GEORGE]. I heard both of those arguments.

Mr. WALSH. My recollection about the matter is that I precipitated that question myself. I interrupted the Senator from Georgia in the course of his remarks, the matter being generally adverted to, and expressed my views concerning it, but I did not concede that it had any application.

Mr. NORRIS. The Senator then does not believe that that particular objection made by the Senator from West Virginia and the Senator from Georgia against the admission of Mr. NYE has any weight?

Mr. WALSH. I listened attentively to the argument of the Senator from West Virginia, but I understood he was supporting the case of Mr. NYE.

Mr. NORRIS. I am speaking of the junior Senator from West Virginia [Mr. GOFF].

Mr. WALSH. I thought I followed the argument of the junior Senator from West Virginia, but I do not understand that he made that argument.

Mr. NORRIS. I think he did.

Mr. WALSH. I think the matter was incidentally referred to first in the address of the Senator from Georgia only in the most casual way, when I took the liberty to suggest that it was a real serious inquiry.

Mr. NORRIS. I think the Senator from Georgia made a very serious argument on it. I listened to the argument of the Senator from Georgia.

Mr. WALSH. The Senator from Nebraska is in error there. I am very sure the Senator from Georgia expressed no opinion upon the matter one way or the other.

Mr. HEFLIN. If the Senator from Nebraska will permit me——

Mr. NORRIS. Certainly.

Mr. HEFLIN. I think what the Senator from Nebraska had in mind and what I had in mind and what some others had in mind was that the Senator from Montana in his speech the other day, when asked by some one—I think the senior Senator from West Virginia [Mr. NEELY]—if he thought that the Senator from Massachusetts [Mr. BUTLER] had a right to sit in the Senate if the seventeenth amendment was properly construed, in the light of the fact that his State had not called any special election, said that there was grave doubt about it, or something to that effect.

Mr. WALSH. I think the Senator from Alabama is essentially correct.

Mr. NORRIS. That is substantially what I said.

Mr. WALSH. The subject engaged my attention at the time the Senator from Massachusetts [Mr. BUTLER] presented his credentials here, and I was then of the opinion concerning the proper construction of the statute adverted to upon the floor that the Senator from Alabama has suggested. I found, however, as I stated upon the floor, that nearly every State in the Union—in fact, every State that has legislated upon the subject—has taken a different view of the matter and had enacted statutes, my own State among them, postponing the election until the next general election. I felt that the preponderance of that construction of the amendment by every State which had expressed itself upon the subject was so powerful that I would not find very much support for the other view, but that was my view of the construction of the amendment.

Mr. NORRIS. The Senator would have found more support if he had advocated it against Mr. NYE than he would if he had advocated it against the Senator from Massachusetts [Mr. BUTLER]. I do not think there is any doubt about that.

I am going to read from the RECORD of January 9, at page 1741:

Mr. NEELY—

He was interrogating the Senator from Montana—

I wish to inquire of the eminent Senator from Montana if he believes that any appointment for two years to fill a vacancy in the United States Senate is really in accord with the spirit of the seventeenth amendment to the Constitution?

Mr. WALSH. I am very clearly of the opinion that it is not.

He had reference in that case to the Senator from Massachusetts [Mr. BUTLER].

Mr. WALSH. That is perfectly accurate and expressed entirely my view of the matter. I think it is a clear violation of the duty of the governor of any State to postpone the election for a period of two years.

Mr. NORRIS. If that be true, then the Senator from Massachusetts ought not to be allowed to retain his seat in this body.

Mr. WALSH. I am likewise of the opinion that the question is involved in very grave doubt as to whether the State legislature has the power to enact any such legislation as that. If it should ever transpire that the governor of a State should disregard such a statute as that and decline to be bound by it, but would call a special election within 90 days after the vacancy occurred and the election were held and the man elected came here and presented his credentials, I am of the opinion that the Senate would be obliged to follow the Constitution and decline to seat him.

Mr. PEPPER. Mr. President, will the Senator from Nebraska permit me to address a question to the Senator from Montana?

Mr. NORRIS. No; I do not want to do that. The Senator may do that in his own time. If the Senator wants to ask me a question, I will yield.

Mr. PEPPER. I will propound it to the Senator from Nebraska then. I should like to ask the Senator from Nebraska,

upon the point which he is now discussing, what effect he gives to the proviso in the seventeenth amendment which empowers the executive to make temporary appointments until the people fill the vacancies by election as the legislature may direct. I want to inquire whether that is not a clear intimation that the legislature of the State under the seventeenth amendment is free to determine whether or not the vacancy shall be filled at an election within the period for which the governor might issue a special writ or for a longer period as the legislature itself may determine; that there is no limitation, in other words, as to the power of the legislature to extend the time during which the governor's appointee may sit.

Mr. NORRIS. The Senator must not get the idea that I am arguing that this is a valid objection to the seating of anybody. I take the contrary view. Let us have no misunderstanding about that. I am not complaining that the Senator from Massachusetts [Mr. BUTLER] was wrongfully admitted or that the Senator from Missouri [Mr. WILLIAMS] or the Senator from Indiana [Mr. ROBINSON] was wrongfully admitted. I am only claiming that if Senators are going to exclude NYE for that reason, then it is their duty to put these other Senators out and declare their offices vacant.

The recent argument of the Senator from Montana gave me much encouragement and some light when he said that he had had some doubt about that question when the Senator from Massachusetts came and presented his credentials, but that he did not think he could get any support, and the point was so technical that he did not try to make any objection about it. I have never made any objection either, but now comes NYE from North Dakota and that objection is made, and Senators are seriously arguing that the objection is sufficient to keep him out of the Senate.

Mr. WALSH. Mr. President, will the Senator suffer another interruption?

Mr. NORRIS. Certainly.

Mr. WALSH. I should like to inquire of the Senator who did make that point against Mr. NYE.

Mr. NORRIS. The Senator from Georgia [Mr. GEORGE].

Mr. WALSH. I dispute that.

Mr. NORRIS. We will let the RECORD speak for itself.

Mr. WALSH. The Senator from Georgia is not in the Chamber at this moment.

Mr. NORRIS. No; he is not.

Mr. WALSH. I shall be surprised to find anything to that effect in the argument of the Senator from Georgia.

Mr. NEELY. Mr. President, will the Senator yield?

The VICE PRESIDENT. Does the Senator from Nebraska yield to the Senator from West Virginia?

Mr. NORRIS. I yield.

Mr. NEELY. At the middle of column 2, page 1740, will be found the exact matter to which the Senator from Nebraska is referring. It begins with the third paragraph of that column.

Mr. NORRIS. Will the Senator read it?

Mr. REED of Missouri. Who was speaking at the time to which the Senator refers?

Mr. NEELY. It was the junior Senator from Georgia [Mr. GEORGE] who was speaking as to the constitutional provision. He was addressing himself to the very objection which the Senator from Nebraska is now discussing, an objection to the constitutional provision found in the constitution of the State of North Dakota. He said:

> The constitutional provision, however, undertakes to and does empower the governor, where no other method is provided either by the constitution or laws for the filling of a vacancy, to fill vacancies in office. The Legislature of the State of North Dakota, the people of the State of North Dakota in their sovereign capacity, have utterly no power to empower their governor to fill a vacancy in the office of United States Senator by appointment, because the seventeenth amendment expressly withdraws every power theretofore granted and reinvests the people with the authority to fill every vacancy in every senatorial office by election and not by appointment.
>
> Oh, but it is said, the greater includes the less. The greater what includes the less? The greater includes the less, certainly, if the less is a component part of it. But can any man define what is a temporary appointment in duration of years, or days, or months? Neither the Legislature of North Dakota, nor the people of North Dakota, nor the people of any other State, have the right to fill the vacancy. They can only empower the governor to fill temporarily that vacancy until the people elect, as the legislature shall direct.
>
> Can anyone define a temporary appointment? Why engage in metaphysical argument that the greater includes the less? The greater does include its component parts, but a temporary appointment is not a component part of the entire residue of a deceased Senator's term.

Mr. WALSH. Mr. President, will the Senator pardon me? If the Senator had only read a little further——

Mr. NORRIS. Will the Senator from Montana read it?

Mr. WALSH. I shall be glad to do so. The point the Senator from West Virginia read has no relation whatever to the matter that is the subject of the colloquy between the Senator from Nebraska and myself.

Mr. NEELY. Will the Senator from Nebraska yield to me once more?

Mr. NORRIS. Certainly.

Mr. NEELY. If I may be permitted, the matter the Senator from Nebraska was discussing, as I understood it, when the Senator from Montana first asked his question was the distinction or difference between a temporary appointment and an appointment to fill a vacancy.

Mr. WALSH. No; that is not the question I precipitated at all.

Mr. NEELY. That was not the question to which the Senator from Montana directed his remarks, but the RECORD will show, I think, that the question just stated was the question which the Senator from Nebraska was discussing the instant before the Senator from Montana entered the Chamber.

Mr. WALSH. I am quite sure that the Senator from Nebraska does not so understand; but, Mr. President, if the Senator from Nebraska will pardon me a little further, the Senator from Georgia [Mr. GEORGE] answered a question of the Senator from West Virginia [Mr. NEELY], which was—

> Does the Senator think that the appointment of Mr. BUTLER, for instance, by the Governor of Massachusetts, for a term of two years, lacking a few days, was a temporary appointment within the purview of the language of the seventeenth amendment?

The reply of the Senator from Georgia was—

> If the Legislature of Massachusetts considered that question and determined it, I should say it had the right to do it; but the Legislature of Massachusetts had the right to do it and the power to do it, and it alone had that power, not the Governor of Massachusetts.

The Senator from Georgia having advanced that idea, later on at some length I took occasion to question the soundness of that view. In other words, the Senator from Georgia, far from making the argument I had made, made an argument quite the reverse, and I simply did not want to allow it to pass unchallenged in this body, lest, if the matter should come up at some later time and we should give consideration to that particular question, it might be considered as one that had been passed non obstante at this time. So I yet await an argument from any Senator on this floor that Mr. NYE is not entitled to a seat upon that ground.

Mr. NEELY. Mr. President——

Mr. HEFLIN. Will the Senator from Nebraska yield to me?

Mr. NORRIS. I yield first to the Senator from West Virginia.

Mr. NEELY. I wish to inquire of the Senator from Nebraska if I am not correct in stating that he was engaged in protesting against the hairsplitting technicality indulged on the floor of the Senate in differentiating in a material way between the power of the governor to appoint to fill a vacancy and the language of the seventeenth amendment which refers to the matter of a temporary appointment?

Mr. NORRIS. Yes; I think that is correct.

Mr. HEFLIN. Mr. President——

Mr. NORRIS. I yield to the Senator from Alabama.

Mr. HEFLIN. I merely wish to suggest this to the Senator from Nebraska, in view of the suggestions and quotations from the speech of the Senator from Georgia [Mr. GEORGE]. If the Legislature of Massachusetts had the right after the adoption of the seventeenth amendment to confer upon the governor the power to appoint a Senator for nearly two years, did not the Legislature of North Dakota, which assembled after the adoption of the seventeenth amendment and reenacted a statute in which was employed language to the effect that the governor shall fill all vacancies except those of members of the legislature, have the right to confer upon its governor the right to fill a vacancy by an appointment for six or seven months?

Mr. NORRIS. I think so. Of course, I think Senators misconstrue my attitude by indulging in the theory that I am making or am trying to make an argument against the validity of these other appointments. I do not believe that objection to Mr. NYE is valid. I do not believe the objection to the other Senators would be sustained by the Senate. But why are Senators arguing that point? Why are the Senators who are opposed to the admission of Mr. NYE spending the time of the

Senate and filling the RECORD up with arguments on that very proposition if they do not believe it?

Mr. WALSH. Mr. President, let me ask the Senator again who is making that argument against Mr. NYE?

Mr. NORRIS. I have heard that argument. The Senator from Montana disputes it, of course. I think what has been read here from the Senator's own lips has presented that argument. By the way, I will read further, since the Senator is anxious about this matter. The Senator from Montana further said:

> The question that has just now been discussed briefly is one on which I hope no one will thus hastily stand committed. It is a most serious question that some day or other may confront us under the seventeenth amendment to the Constitution. I think that there is the gravest kind of doubt as to whether the various statutes passed by the legislatures of the States, providing that the election shall be held at the next general election, can be regarded as valid under the amendment.

That is the law under which these Senators are holding office now. The Senator from Montana further said——

Mr. REED of Missouri rose.

Mr. NORRIS. Let me finish reading this quotation. The Senator from Montana further stated:

> The amendment, it seems to me, unquestionably reposes in the governor the power to fix the time at which the general election shall be held. If Senators will observe, it is unqualified, when vacancies happen in the representation of any State in the Senate, that the executive authority of such State shall issue writs of election to fill such vacancies, and it can determine unquestionably under settled authority when that election is to be held. The legislatures of a great many States have stepped in and endeavored to take that power away from him by providing that the election shall not take place until the next general election. Under such an act the Governor of the State of Massachusetts was by the Legislature of the State of Massachusetts divested of his power under the amendment, provided that construction is correct. I have always felt that the subsequent provision of the amendment of the Constitution "that the legislature of any State may empower the executive thereof to make temporary appointment until the people fill the vacancies by election as the legislature may direct" has no reference at all to the power. The legislature, in my judgment, has no power to fix the time. The expression "as the legislature may direct," in my judgment, refers to the manner in which the election shall be conducted, whether it shall be conducted under the general laws or whether they shall make special provision for the election of a United States Senator.

Mr. WALSH. Mr. President——

Mr. NORRIS. First I will yield to the Senator from Missouri.

Mr. REED of Missouri. I will wait until the Senator from Montana concludes.

Mr. WALSH. I want to call attention to the fact that I was making that argument in favor of Mr. NYE and not against him. The Governor of North Dakota has acted in perfect conformity with the provisions of the Constitution and, without any act of the legislature at all, called a special election, as I understand, for the 30th day of next June. He has done exactly what the Constitution directs him to do, as I interpret it. I have not argued against Mr. NYE on that ground, and, as I have said, I am not aware that anyone else has. So it seems to me, from my present impression concerning the course of this debate, to bring that contention in here is putting up a straw man to knock him down.

Mr. NORRIS. No; it is a contention that the Senator has advanced so far as the Senator from Massachusetts is concerned and any other Senator who holds a seat here by the same kind of title. The Senator can not get away from the facts.

Mr. WALSH. I am not seeking to get away from them, but the point I am making——

Mr. NORRIS. I am not disputing that point; but the Senator did say here, and I understand he stands by it yet—and I am not quarreling with him about it at all—that it is an important question and he has grave doubt as to whether under the seventeenth amendment any man coming here by appointment is entitled to his seat under the same kind of a statute that exists in Massachusetts, by virtue of which the senior Senator from that State [Mr. BUTLER] comes here. That is plain, I think. I think it is a technicality that we ought not to consider. Other States have done the same thing; and I am making an argument that if that weakness in the title of other Senators exists and is used here against Mr. NYE, then we ought to apply it all around.

I think, Mr. President, the statement of the Senator from Montana bears out my general statement that, after all, we ought not to consider mere technicalities. He has called attention to a technicality on which, able lawyer that he is, he could make an argument convincing to anyone who would follow technicalities that the title of several Senators here in this body is such that we ought to declare their seats vacant. I am only arguing that in the North Dakota case we ought to overlook technicalities just the same as we have done in the Massachusetts case or the Indiana case or the Missouri case, or as we should do in a case from any other State.

Mr. GEORGE. Mr. President——

Mr. NORRIS. I promised to yield first to the Senator from Missouri.

Mr. REED of Missouri. Mr. President, I merely want to say that, regardless of whether this point has been raised against Mr. NYE by Senators on the floor, if it exists, it is a matter for consideration. I think that it is not necessary for some Senator to have urged a particular point in order that it may be in this case and in the minds of Senators who have to decide it. I think the question as to whether a legislature can meet and pass a statute which deprives the governor of the power to call an election at his own will is a very serious question indeed. But I understand that in the Nye case that point is not involved because in the Nye case the legislature did not undertake to deprive the governor of the opportunity to call an election, and he did call an election. So that what he has done in the case before us is to undertake to fill a vacancy during the interval between the meeting of Congress in December, 1925, and the time for which he had called the election. Therefore, the objection I am discussing and to which reference has been made can not be urged against Mr. NYE; but it does not follow that the matter is not in point in a sense if not strictly in a legal sense.

If we waived this important point—that is, of the legislature trying to deprive the governor of the right to call an election, as to other Senators and did not give it consideration because there was no contest and there was no claim of fraud or any wrong-doing and, therefore, we seated them without a contest on the broad ground that there was no wrong being perpetrated—it occurs to me that that is a very potential argument or reason in favor of Mr. NYE, because his case seems to bear the same relation to his right to a seat as do the cases of the other Senators. I am asking the question why men who could without any hesitancy vote to seat other Senators and could waive this technical objection which existed, whether it was raised or not in their cases, should now be so exceedingly technical with reference to a man who happens to come from North Dakota.

Mr. GEORGE. Mr. President——

The PRESIDING OFFICER (Mr. JONES of Washington in the chair). Has the Senator from Nebraska yielded the floor?

Mr. NORRIS. Yes.

Mr. WILLIAMS. Mr. President, I should like to ask my colleague from Missouri a question.

Mr. REED of Missouri. I yield.

Mr. WILLIAMS. The appointment of a United States Senator from the State of Missouri is made under section 4787, I think, of the revised statutes of our State, which was passed in 1915. Under that section the appointment of Hon. Xenophon P. Wilfley was passed upon by the Senate, and his credentials were received on the theory, I assume, that the act of the State of Missouri of 1915 was passed in recognition of and pursuant to the seventeenth amendment, specifically referring to the power of the governor to appoint a United States Senator to succeed in the event of a vacancy.

Mr. REED of Missouri. I do not think my colleague understood my remark. I am not raising any question at all as to his right to sit in this body. I think he has a perfect right to be here. I am not raising any question as to the right of the Senator from Massachusetts [Mr. BUTLER] to sit here. I will say to my colleague that I am not familiar with the statutes of our own State with regard to the appointment of a Senator. I have not examined them. I assume they are in proper shape; but if that point could be waived in the Massachusetts case, not seriously considered by the Senate, not set up as a technical objection, it must have been because everybody understood that the Senator from Massachusetts came here in good faith, appointed by the governor in good faith, nobody was claiming any fraud or any irregularity, and hence we did not concern ourselves with trying to find out whether we could get some technical ground on which to reject him, and I am asking why that argument does not have a pretty forcible application in the North Dakota case.

Mr. WILLIAMS. Mr. President, will not my colleague agree with me that the question of good faith arises only when we exercise our function to pass upon the qualifications of Members of this body?

Mr. REED of Missouri. Certainly; but we do that when we give the Member a seat. Whether we do it with argument or without argument, with debate or with no debate, nevertheless when the applicant for membership is seated and thus made a Member we are passing upon the question.

Mr. WILLIAMS. I quite agree with that; but the question of the character of the man who might be appointed by the governor, if he were a bad man or if he did not believe in the institutions of his country, or questions of that sort, might arise in consideration of the qualifications of the man himself who was sent here by the governor; but the question of good faith or no good faith, or fraud or no fraud, does not necessarily arise where the statute is plain and where the statute indicates that it has been passed pursuant to the seventeenth amendment, and refers to a United States Senator.

Mr. REED of Missouri. Mr. President, that is very true. There is no dispute between my colleague and myself on that point; and I want to repeat that I am not challenging his right to a seat here. If anybody challenges it, I will fight for him just as hard as he would fight for himself. I think he is here regularly. His name simply happened to be mentioned in this debate, together with the names of other Senators.

Mr. WILLIAMS. Mr. President, a further question, and that is the question as to the length of time for which a Senator comes here. The question of temporary appointment is one to be determined by the legislature of the State; is it not? The Senator from Massachusetts [Mr. BUTLER] may come here for a term of approximately two years, the legislature of that State having determined under the seventeenth amendment that that may be a temporary appointment, whereas the statutes of Wisconsin plainly indicate that in that State four months is regarded as the term for a temporary appointment.

Mr. HEFLIN. Mr. President, will the Senator permit me to ask him a question?

Mr. WILLIAMS. Certainly.

Mr. HEFLIN. Does the Senator believe, then, that a legislature could empower the governor to make a temporary appointment for four years or five years, in the face of the seventeenth amendment.

Mr. WILLIAMS. That would be an expression of personal opinion only; and that is what I understood the Senator from Montana [Mr. WALSH] to indicate the other day when he was questioned as to whether the time for which the Senator from Massachusetts was appointed was temporary or not. He expressed his opinion that that term was too long to be regarded as temporary, but it is my understanding that he did not intend by that statement to assert that it was not within the competency of the Legislature of Massachusetts to determine what is a temporary term. I should say that in my own personal judgment I agree with the Senator from Montana; but I think I have nothing to say about that, inasmuch as the seventeenth amendment refers the whole question to the legislature of the State.

Mr. HEFLIN. But the Senator has a personal opinion. Does the Senator believe that the legislature of any State has a right to empower the governor to make an appointment for as long a time as four years or five years and call it a temporary appointment?

Mr. WILLIAMS. I think it has.

Mr. HEFLIN. I differ with the Senator. I do not think it has any such authority.

Mr. REED of Missouri. Mr. President, I do not think the question has been correctly stated. It is not a question of whether the legislature can empower the governor to appoint for a particular term; it is a question as to whether the legislature can deprive the governor of the right to call an election. That is the real question.

Mr. WILLIAMS. That is a rather anomalous question under these two sections of the seventeenth amendment, I should say; and I think the Senator from Georgia [Mr. GEORGE] will agree with me on that. It qualifies the right of the people to elect a United States Senator for the long term, and their successive right to elect for a temporary term, by giving the governor the power to make a temporary appointment; but the governor must do that as directed by the legislature. Those are the words of the seventeenth amendment.

Mr. NORRIS. Mr. President, the Senator from Missouri [Mr. WILLIAMS] was appointed a Member of this body by virtue of a statute of Missouri. I believe this is the statute:

> Whenever a vacancy in the office of Senator of the United States from this State exists the governor, unless otherwise provided by law, shall appoint a person to fill such vacancy, who shall continue in office until a successor shall have been duly elected and qualified according to law.

Let me preface again what I say. I am making no question of the Senator's right to sit here. I never have made any; but if we were going to adopt a technical rule, if we were going to be very technical, we would not admit the Senator into this body under that law, because the seventeenth amendment says, and it uses the word "shall"—

> When vacancies happen * * * the executive authority of such State shall issue writs of election.

And the appointment that he has power to make, if given authority by the legislature, is to hold the office until, under that election which he calls by virtue of the seventeenth amendment, a Senator is duly elected to fill the vacancy. The Governor of Missouri did not do that, as I understand. The Governor of Missouri simply appointed the Senator a Member of this body, to hold office until his successor was duly elected according to law and qualified according to law. He called no special election. If we are going to construe this thing technically, I repeat that we must exclude the Senator from Missouri, and we must exclude all other Senators who hold their title here by the same kind of law.

Mr. WILLIAMS. Mr. President——

The PRESIDING OFFICER. Does the Senator from Nebraska yield to the Senator from Missouri?

Mr. NORRIS. Yes.

Mr. WILLIAMS. I understood the Senator from Nebraska a moment ago to say that he would challenge the vote of certain Senators.

Mr. NORRIS. Yes, Mr. President.

Mr. WILLIAMS. I now understand him to say that he has no doubt of my right to sit in this body. Of course, the Senate has determined that question, as it determined it in a previous case arising from Missouri. The Senate knew that the act of 1915 of the State of Missouri had been passed pursuant to and in recognition of the seventeenth amendment and in recognition of the fact that constitutions of States have nothing at all to do with this question but that the statutes of States do have something to do with it; and it has been the evident purpose and intent of the Senate to try to determine the real meaning of these statutes as passed in the various States.

Having done that twice in the case of the State of Missouri, and since it does not appear upon the record whether or not the governor has issued or shall issue writs of election, I respectfully submit that the Senator from Nebraska may not be speaking with full knowledge of the contents of our State statute on the subject.

Mr. NORRIS. I ask the Senator now, Did the Governor of Missouri issue a writ for a special election in his case?

Mr. WILLIAMS. I do not know whether he did or not.

Mr. NORRIS. I take it, because it is not cited in this statute, that he did not do it; that he did not have any authority to do it under the Missouri statute, if it is all here.

Mr. WILLIAMS. Unfortunately, Mr. President, that is not the only section of the Missouri statute on the subject.

Mr. NORRIS. That may be. I did not put it in the RECORD. It was put in there by the Senator from West Virginia [Mr. GOFF] in making an argument against the admission of Mr. NYE.

Mr. President, I take it that this is all of the statute that applies. If there is any more I should like to see it; or if the governor did issue a writ for a special election I should like to know that. I think the Senator from Missouri certainly would know whether he did or not. Under this statute I take it that he has not any authority to do it, because it says:

> Whenever a vacancy in the office of Senator of the United States from this State exists, the governor, unless otherwise provided by law, shall appoint a person to fill such vacancy who shall continue in office until a successor shall have been duly elected and qualified according to law.

If the governor did issue a special writ, I should like to know it. It would remove to a great extent the objection of a very technical nature.

Mr. WILLIAMS. Mr. President, the Senator has read the words "according to law."

Mr. NORRIS. Yes; and that means that when the next election comes around the vacancy will be filled at a general election. It means that no writ of election has been issued by the Governor of Missouri. If we are going to be technical, the Governor of Missouri has failed to carry out the provisions of the seventeenth amendment wherein it says that he "shall" issue such writs of special election.

Mr. President, let me say now that while I did say I would challenge the right of these Senators to vote on the Nye case, yet because most Senators whom I supposed had made an argument for the exclusion of Mr. NYE on this ground have said that they did not make it; and I take their word for it, and that they are not now advocating the exclusion of Mr. NYE on this ground. That being true, Mr. President, if no one is advocating that, of course, I would not challenge the right of any of these Senators to vote, and would content myself with calling attention to the fact that if technicalities were enforced, if we are going to split hairs on technicalities, there would be several other Senators who would not be admitted here. I have been trying to make an argument that we should not be so technical. I devoted most of my time to trying to show that in this particular case we were given the broadest kind of authority by the Constitution of the United States, so that we could throw aside little technicalities, so that we could consider the whole matter with the very purpose in view of bringing into this body a full representation from every State, which the Constitution of the United States says we ought to do, and that we should not deprive any State of that representation without its consent.

Mr. BRUCE. Mr. President, I can not let this controversy in relation to the supposed right of GERALD P. NYE to a seat in this body pass without briefly expressing my views with respect thereto.

I take it for granted that no Member of the Senate has a right to unite in a vote seating anyone in this body in a spirit of mere complaisance or sympathy or generosity. The Federal Constitution says, it is quite true, that the Senate shall be the judge of the qualifications and returns of its own Members, and that provision, of course, gives an extraordinary degree of latitude to this body in determining whether any individual is or is not entitled to a seat in the Senate. Nevertheless, I assume that it is too clear for argument that what the Federal Constitution intends is that this body should be the judge of the qualifications and returns relating to anyone who claims a seat in this body; and that it shall be the duty of every Member of the Senate as far as possible to bring a judicial, a disinterested, a dispassionate spirit to bear upon the question as to whether such a person is or is not entitled to a seat here.

That obligation, I submit, no self-respecting Member of this body can escape. No Senator has the right to haste in conferring a seat in the Senate upon anyone as a mere gift or largess or favor. When the Members of this body come to vote with reference to the issues involved in this controversy it will be incumbent on them to vote without reference to any secondary considerations whatsoever. They should not ask whether the Senator from Massachusetts [Mr. BUTLER] was or was not illegally appointed. They should not ask whether the Senator from Missouri [Mr. WILLIAMS] was or was not illegally appointed. Those are collateral questions, involving purely collateral issues. They should not ask whether Mr. NYE is a Democrat or whether he is a Republican or whether he is a Progressive. Their duty is to ask merely whether he has been legally appointed to a seat in this body.

When Governor Sorlie undertook to appoint GERALD P. NYE to a seat in the Senate he said that he did it in pursuance of the constitution and the laws of the State of North Dakota and of the Federal Constitution. Of course, there is no possible source from which authority on his part to make such an appointment can be deduced except one of those three sources. I really can not see how any lawyer can seriously contend that the constitution of North Dakota authorized Governor Sorlie to appoint GERALD P. NYE. What is the language of that constitution? Section 78 reads:

> When any office shall from any cause become vacant, and no mode is provided by the constitution or law for filling such vacancy, the governor shall have power to fill such vacancy by appointment.

Can it be successfully contended that those provisions have any application to this case? The power of the governor under them to appoint obtains only when there is no mode provided under the constitution or laws of North Dakota for the filling of the vacancy. Those provisions were adopted by the people of North Dakota 24 years before the seventeenth amendment to the Federal Constitution went into effect, and they were adopted when the Federal Constitution provided that Senators should be elected by the legislatures of the different States, and that during the recess of any legislature the governor should have the power to make an appointment until the legislature should meet.

When the people of North Dakota adopted them they were, I hardly need say, thoroughly familiar with the existing provisions of the Federal Constitution in relation to the election of United States Senators.

Mr. FRAZIER. Mr. President——

The PRESIDING OFFICER. Does the Senator from Maryland yield to the Senator from North Dakota?

Mr. BRUCE. Not just now. I will yield later.

It is inconceivable, therefore, that in adopting those constitutional provisions the people of the State of North Dakota could have had any reference whatever to the office of Federal Senator.

I do not deny that a constitutional provision may not apply to a thing that is nonexistent at the time that it is adopted, and may yet subsequently apply to it when the thing comes into existence. For instance, when the Federal Constitution was adopted there was no such thing as a steamship or a railroad train, nor was there such a thing as a telegraph or a telephone wire or a radio apparatus. Yet to-day the clause in the Federal Constitution which gives to Congress power to regulate interstate commerce applies to the commerce promoted by steamships, railroad trains, telegraph and telephone wires, and radio apparatus.

So, Mr. President, if the seventeenth amendment to the Federal Constitution were not just what it is, it might be argued, and with force, that whether the language of the constitution of North Dakota was or was not intended to apply to Federal Senators, it now, because of its broad terms, applies to them. But that argument can not be made, because of the peculiar wording of the seventeenth amendment to the Federal Constitution. What is that wording?

> When vacancies happen in the representation of any State in the Senate the executive authority of such State shall issue writs of election to fill such vacancies: *Provided*, That the legislature of any State may empower the executive thereof to make temporary appointment until the people fill the vacancies by election as the legislature may direct.

Need I declare that the provisions of the constitution of North Dakota, even if they could in any view of the case be held applicable to a Federal Senator, are hopelessly repugnant to the seventeenth amendment to the Federal Constitution and must therefore yield to it. Under the constitution of North Dakota the governor has no power to appoint except when there is no mode of appointment provided for by the constitution and the laws of the State of North Dakota. Under the language of the seventeenth amendment to the Federal Constitution the governor can not appoint until the legislature authorizes him to appoint. The irreconcilability is manifest.

Mr. HEFLIN. Mr. President——

The PRESIDING OFFICER. Does the Senator from Maryland yield to the Senator from Alabama?

Mr. BRUCE. I yield, though I suppose I should not yield to the Senator from Alabama without first yielding to the Senator from North Dakota. I do not mean any discourtesy to the Senator from North Dakota.

Mr. HEFLIN. The Legislature of North Dakota did assemble after the seventeenth amendment to the Federal Constitution had been adopted and reenacted a statute which gave the governor authority to fill all vacancies arising in that State, using the language "all vacancies."

Mr. BRUCE. I am coming to that, and coming to it shortly. I am arguing now merely that the Governor of North Dakota was not in a position to derive his supposed authority to make this appointment from the constitution of North Dakota. Now, I say that he was in no better position to derive authority to make that appointment from the laws of the State of North Dakota.

Mr. FRAZIER. Mr. President, will the Senator yield?

Mr. BRUCE. I yield.

Mr. FRAZIER. The Senator from Maryland referred to article 78 of the constitution of North Dakota providing that the governor shall have authority to fill all vacancies, and the Senator stated that that provision of our constitution was adopted in 1889, long before the seventeenth amendment to the Federal Constitution was adopted. That is very true. But away back in 1860 the matter of changing the provision with reference to the election of United States Senators was brought up in the Senate. It was brought up again in 1886 and again in 1890. A day or two ago in this discussion the Senator from West Virginia [Mr. NEELY] cited

two or three Supreme Court decisions in cases where certain laws had been passed in anticipation of the adoption of amendments. I do not know whether or not the constitutional convention of North Dakota which framed our constitution had in mind at that time the fact that a change in the mode of choosing United States Senators was contemplated, but we have no way of knowing that they did not take that very thing into consideration, because on the floor of the Senate in 1888 a provision of that kind was introduced to change the method of choosing United States Senators by providing for direct election by the people.

Mr. BRUCE. Of course, the Senator has failed to grasp my train of reasoning. It may be my fault and it may be his. So far as my argument is concerned, it is entirely immaterial whether the people of North Dakota, when they adopted that constitutional provision, did or did not have the office of Federal Senator in mind.

My point is that even if it would otherwise be applicable it can not apply to this case because it is hopelessly repugnant to the terms of the seventeenth amendment to the Federal Constitution. The provision in the North Dakota constitution gives the governor the power to appoint, provided there is no other mode of appointment prescribed by the constitution or laws of the State of North Dakota. The seventeenth amendment to the Federal Constitution provides that the legislature may authorize the governor to make a temporary appointment to the United States Senate. In other words, the provision in the constitution of North Dakota, whatever may be its effect, applies only where there is no other mode of appointment prescribed by either the constitution or law of the State of North Dakota. The seventeenth amendment to the Federal Constitution points out specifically the manner, and therefore the only manner, in which a temporary appointment can be made; that is to say, by the governor acting in pursuance of legislative authority bestowed upon him under the provisions of the seventeenth amendment by the legislature of his State.

With due deference to my friends who have argued this question in behalf of Mr. NYE, I say that it is impossible for them successfully to answer my argument so far as it has proceeded.

Now I come to the question whether there was anything in the laws of North Dakota from which the governor of that State could have derived the authority to appoint. There is not a thing, in my judgment, and not a thing even if we believe those who are supporting the appointment in this body except the act of the Legislature of the State of North Dakota of the year 1917. What was that act? It was not an act of first impression. It was not res nova. It was an act which undertook to repeal and reenact with amendments a preexisting statutory provision of the laws of North Dakota, namely, section 696 of the North Dakota Code of 1913. It did not undertake to repeal section 696 of the North Dakota Code in toto. It brought down all its wording from the words of section 696 of the North Dakota Code of 1913, except certain added words which provided that vacancies in the office of State's attorney arising under particular conditions should be filled by the boards of county commissioners.

In every other respect, except as regards a slight transposition of words in one place, the act of 1917 was identically the same enactment as section 696 of the North Dakota code of 1913.

Nothing can be better settled as matter of law, settled by the supreme court of my State, settled, as the junior Senator from West Virginia [Mr. GOFF] showed, by the decisions of North Dakota, settled by numerous other decisions in other States than that when one statutory enactment repeals and reenacts another with amendments, the continuity of the first statute remains uninterrupted. The last time that that was decided in my State was in the case of Swan *v.* Kemp (97 Maryland 691). There the court was considering the effect of legislation of 1888 upon certain legislation of the year 1884 and it said:

> The subsequent legislation of 1888 and 1900 repealing and reenacting the act of 1884, chapter 485, did not repeal it in the sense of obliterating it and doing away with its object and effect; but was enacted in furtherance of the object of the act which it thus repealed and reenacted. The latter was substantially reenacted, and the main and fundamental provisions thereof were preserved and embodied in the new law. The change made was only in regulations affecting the practical operation of the law. This brings the case at bar within the principle laid down in the cases of—

Then the court cited a number of decisions in previous cases that had come before the Court of Appeals of Maryland, and proceeded as follows—

> which have declared the effect of laws repealing and reenacting existing laws under article 3, section 29 of our constitution and the legislative practice thereunder; and have held "that where a repealing law contains a substantial reenactment of the previous law the operation of the latter continues uninterrupted."

So the act of 1917, which has been quoted in full in this debate, so far as the power was bestowed by it upon the governor to appoint to "State and district offices," had exactly the same legal effect, no more, no less, than section 696 of the North Dakota Code of 1913, which also contained those words. What the words "State and district offices" meant in section 696 of the North Dakota Code they meant in the act of 1917. Whatever scope they had in section 696 they had in the act of 1917. The latter statute, being a mere repealing and reenacting statute, did not either contract or enlarge the legal effect of section 696 of the North Dakota Code as respects those words, which at the time that they were first employed could not possibly have been intended to include the office of Federal Senator, which the governor of a State was then authorized by the Federal Constitution to fill during the recess of the legislature. So I say, with such a degree of confidence as I have rarely ever felt in dealing with any legal question that the conclusion, which I have reached, that Governor Sorlie had no right under the constitution of North Dakota, or under the act of 1917 of North Dakota, to make this appointment, is unassailable.

Of course it is immaterial to my line of argument to ask whether, under different circumstances from those which surround the present controversy, the words "State offices" in the act of 1917 would have been broad enough to have included the office of Senator; but I will stop just a moment to inquire whether in passing on that question there is not at least one legal consideration of the utmost importance to be taken into account. There is no canon of construction in regard to the interpretation of statutes that is better established than the canon that all statutes, except where technical words are used, must be construed as their natural, obvious, popular import suggests that they should be construed. Suppose I were to say to one of my constituents in Maryland, or the Senator from Georgia [Mr. GEORGE] were to say to one of his constituents in Georgia, that the Governor of Maryland or the Governor of Georgia, as the case might be, had the power to appoint to State offices.

Could such a man suppose for a single moment that I or the Senator from Georgia intended to include in the term "State offices" such an office as the office of a Federal Senator? Would that be the obvious meaning of the words? Would that be the natural import of the words? Would that be the popular sense of the words? It would not be. Then those words can not be deemed broad enough to include the office of Federal Senator.

Let me turn to one single paragraph from Sedgwick on statutory and constitutional construction corroborative of this statement of mine.

On page 219 the learned author under the head of "The language of a statute," says:

> The rules which we have been thus far considering relate to ambiguity and contradiction in regard to the general scope and purport of a statute; but serious questions may arise in regard to single words, and with reference to the precise meaning of the language used. The rule in regard to this is expressed in the maxim, a berbis legis non est recedendum—the meaning of which is, that statutes are to be read according to the natural and obvious import of their language.

If I am correct in my principle of construction, it is unnecessary for me to ask whether the office of United States Senator is a State office or a Federal office. The Supreme Court of the United States has held that the office of United States Senator is not an office under the Government of the United States. Again it has held that a United States Senator is not a civil officer of the United States; but it is even more certain that a United States Senator can not be termed a State officer in the ordinary sense of a state-wide State officer clothed with State duties and responsibilities or rather with duties and responsibilities that are to be discharged or borne within the limits of the State itself. The Supreme Court has never exactly defined the character of the office of United States Senator. It is, perhaps, a composite office, an office marked to a certain degree by a duality of nature. One thing, however, is certain.

A Senator's duties are not discharged, his responsibilities are not met within the limits of the State itself which he represents in the Senate of the United States. Whether in any proper sense he is a State officer or not the functions that he performs, the duties that he discharges, the responsibilities that he assumes, are all Federal functions, duties, and responsibilities. If I am incorrect in these ideas, my situation I must say, is not such as to convey to my bosom as a taxpayer a feeling of unmixed dissatisfaction, for if a United

States Senator is not a Federal officer but is a State officer, then the Federal Government plainly has no power as it is doing to impose any income-tax obligation upon him, because the Federal Government has no power to tax any instrumentality of any kind that is essential to the workings of a State government.

Is there any Member of this body—I hope there is not—who has not from year to year since 1913 paid an income tax on his salary as a Federal Senator into the Federal Treasury? If there is none, how does it lie in the mouth of any Senator here to say that he is not a Federal officer in any sense, but is a State officer?

Now, just one word more and I am done. That these principles of construction for which I have been contending are the correct principles of construction for this case is also evidenced by the fact that they have been actually adopted in 41 of the 48 States of the Union. No fewer than 41 of the States have enacted special acts authorizing the governors of those States to make temporary appointments to vacancies in the office of United States Senator. The only reason why five more States have not done so is because those five States have not been willing to authorize their governors to make any temporary appointments. There are therefore only two States in the Union—the Senator from Georgia [Mr. GEORGE] will correct me if I am wrong—that have not passed such acts because of oversight or mere omission—namely, Kansas and North Dakota. Of course, that practical construction is a matter of the very highest degree of consequence in disposing of this controversy. All of those States had attorneys general; all of them had governors; all of those governors doubtless secured opinions from the attorneys general of those States as to what should be done to give full effect to the seventeenth amendment to the Federal Constitution. As the result, we find as I have stated, not less than 41 States out of the 48 enacting special legislative measures authorizing the governor of the State to fill temporarily a vacancy in the office of United States Senator. No law having been passed by the legislature of North Dakota authorizing the governor of that State to appoint GERALD P. NYE, obviously the seventeenth amendment to the Federal Constitution can not be relied upon to legalize the appointment.

I can truly say that for many reasons I regret the necessity of reaching the conclusion that I do. I know that a seat in the United States Senate is not to be lightly denied to any man who has been ostensibly appointed to it.

I should despise myself if in a case of this kind I allowed any personal or any partisan or political considerations of any kind to influence my judgment. I have never heard a word about GERALD P. NYE as a man that was not calculated to recommend him to my personal good will; but if he is not legally entitled to the office of Senator, he should not be inducted into it. Do the Members of this body propose to allow themselves to be swayed by any ulterior considerations in determining a question of this kind? If so, bear in mind, Mr. President, that those considerations might have sway at a time when some man was soliciting a seat in this body whose title was not dubious but absolutely clear. The only safe rule in a case of this kind is for every man——

Mr. HEFLIN. Mr. President——

Mr. BRUCE. I am almost through.

Mr. HEFLIN. I merely wish to ask the Senator a question.

The PRESIDING OFFICER. Does the Senator from Maryland yield to the Senator from Alabama?

Mr. BRUCE. Yes.

Mr. HEFLIN. The Senator knows that courts in construing a statute try to find out what was the intent of the legislature in passing it.

Mr. BRUCE. Of course they do. That is the cardinal rule of construction.

Mr. HEFLIN. If the mind of the Senator could be impressed with the idea that when the Legislature of North Dakota reenacted the statute giving the governor the power to fill all vacancies they intended to include in it the office of United States Senator would not that change his attitude?

Mr. BRUCE. I think that the legislative authority called for by the seventeenth amendment could be given in a general as well as a special form.

Mr. HEFLIN. Then, would it not help the Senator in reaching a conclusion to know that that State has passed an act allowing the voters of North Dakota to recall from this body a United States Senator?

Mr. BRUCE. Of course, that is not in the same act.

Mr. HEFLIN. No; that is in another act, but it shows that they regarded a United States Senator as a State officer.

Mr. BRUCE. Those two acts are perhaps entirely different from each other in their origin and scope; I do not know their chronology exactly, but one was probably passed during one session of the legislature and the other during another.

Mr. HEFLIN. I think so.

Mr. BRUCE. And there was probably a long interval between the enactment of the two statutes.

Mr. HEFLIN. I was just making that point to show that they regarded the office of United States Senator from that State as a State office and that they considered they had control over him and the right to remove him from this body. If he were a United States officer the State could not recall him.

Mr. BRUCE. But, on the other hand, I will call the attention of the Senator from Alabama to the fact that section 863 of the North Dakota code uses this language:

> Party candidates for the office of United States Senator shall be nominated in the manner herein provided for the nomination of candidates for State offices.

"For State offices." I am sure that enactment escaped the research of the Senator from Alabama.

Mr. HEFLIN. But that does not affect the point that I raised. In my State I was nominated at the time when the State officers were nominated; we were all nominated at the same time; and my contention is that a Senator is both a State officer and a United States officer.

Mr. BRUCE. Mr. President, I really have forgotten now exactly where the thread of my argument was clipped, but I know that I was getting into the province of morals rather than of juridical reasoning when the Senator from Alabama interrupted me.

In conclusion, let me simply repeat that I think that in a case of this kind each Senator should consult no standard of conduct but his conscience and his intellect and should cast his vote with respect to nothing except the merits of the controversy.

Mr. McKELLAR obtained the floor.

Mr. NEELY. Mr. President, I make the point of order that a quorum is not present.

The PRESIDING OFFICER. The Senator from West Virginia suggests the absence of a quorum. The Secretary will call the roll.

The roll was called, and the following Senators answered to their names:

Ashurst	Fess	Lenroot	Sackett
Bingham	Frazier	McKellar	Schall
Blease	George	McMaster	Sheppard
Borah	Gillett	McNary	Shipstead
Bratton	Glass	Mayfield	Smith
Brookhart	Goff	Means	Stanfield
Broussard	Gooding	Metcalf	Stephens
Bruce	Hale	Moses	Swanson
Butler	Harreld	Neely	Trammell
Capper	Harris	Norris	Tyson
Caraway	Heflin	Oddie	Underwood
Copeland	Howell	Overman	Walsh
Couzens	Johnson	Pepper	Warren
Curtis	Jones, Wash.	Pine	Watson
Deneen	Kendrick	Pittman	Wheeler
Dill	Keyes	Ransdell	Williams
Edge	King	Robinson, Ark.	Willis
Ferris	La Follette	Robinson, Ind.	

The PRESIDING OFFICER. Seventy-one Senators have answered to their names. A quorum is present.

Mr. McKELLAR. Mr. President, for several days able and splendid arguments on both sides have been made in the matter of the admission to a seat in this body of Hon. GERALD P. NYE, of North Dakota, recently appointed Senator by the governor of that State. The arguments made against the seating of Mr. NYE by the junior Senator from West Virginia [Mr. GOFF], by the senior Senator from Montana [Mr. WALSH], by the junior Senator from Georgia [Mr. GEORGE], and other Senators taking that view have been able and splendid. On the other hand, the arguments made by the junior Senator from Mississippi [Mr. STEPHENS], the junior Senator from Alabama [Mr. HEFLIN], the senior Senator from West Virginia [Mr. NEELY], and other Senators on the opposite side have practically exhausted the question, and I feel almost like apologizing for presenting the views that I entertain; but after a careful consideration of the case it seems to me so simple that I hope the Senate will indulge me in giving to them briefly the view I entertain.

As I understand, the matter hinges upon three enactments. One of them is the seventeenth amendment to the Constitution of the United States; the second one is section 78 of the constitution of North Dakota; and the third one is the statute of North Dakota passed in reference to vacancies, adopted March 15, 1917, after the seventeenth amendment was passed.

I desire to read the part of the seventeenth amendment that applies to this case:

When vacancies happen in the representation of any State in the Senate—

And I invite the especial attention of those who think this is not a State office to this language:

When vacancies happen in the representation of any State in the Senate the executive authority of such State shall issue writs of election to fill such vacancies: *Provided*, That the legislature of any State may empower the executive thereof to make temporary appointment until the people fill the vacancies by election as the legislature may direct.

The purpose of this provision, so far as the making of temporary appointments is concerned, is easily seen. From the beginning of our Government the governor of each State had the right in the old days prior to 1913, when Senators were elected by the legislatures, to make a temporary appointment when the legislature was not in session until the next meeting of the legislature. The seventeenth amendment changes that situation and provides that the people shall fill these vacancies by elections called by the governor, but further provides that the legislature may authorize the governor to make temporary appointments.

What was the purpose in this last proviso? It was the purpose expressed in the fifth article of the Constitution, namely, that no State shall be deprived of its equal representation in the Senate and that nothing shall prevent a State from having its two Senators here.

Mr. President, under the old plan the governor was directly given the right to appoint by the Federal Constitution. Under the new plan the legislature was to authorize the governor to appoint. Article 78 of the constitution of North Dakota provides as follows:

When any office shall from any cause become vacant, * * * the governor shall have power to fill such vacancy by appointment.

And in 1917, not long after the adoption of the seventeenth amendment, the legislature passed a law, the exact provisions of which I will quote:

All vacancies * * * in State and district offices (shall be filled) by the governor.

Mr. GEORGE. Mr. President——

The PRESIDING OFFICER. Does the Senator from Tennessee yield to the Senator from Georgia?

Mr. McKELLAR. I will yield to the Senator in just a minute.

Senators, what could be simpler than that Mr. NYE is entitled to his seat under these three provisions? Here is the Constitution of the United States saying that temporary vacancies may be filled by the governor, provided the legislature authorizes the governor so to do. Then the constitution of North Dakota gives the governor the right to fill all vacancies. Then the Legislature of North Dakota comes along and specifically authorizes the governor to fill all vacancies. If that is not ample authority, I can not imagine what is; and yet for several days it has been argued here that that was not what the legislature intended and that, even if it was, this is not a State office and, therefore, the appointment is invalid.

I now yield to my friend from Georgia.

Mr. GEORGE. I merely wanted to ask the Senator to quote all of the constitution of North Dakota on this subject. He omitted a phrase. I am sure he did not do so intentionally.

Mr. McKELLAR. I will read it all if I can find it here, if it will be of any benefit; but this is all that refers to this particular matter. It gives the legislature authority to confer upon the governor the power to fill vacancies.

Mr. GEORGE. No; the Senator misunderstands me.

The PRESIDING OFFICER. Does the Senator from Tennessee further yield to the Senator from Georgia?

Mr. McKELLAR. I yield.

Mr. GEORGE. I merely wish the Senator to quote all of the section of the constitution of North Dakota dealing with this matter.

Mr. McKELLAR. I do not have it before me, but I will put it in my remarks.

Mr. GEORGE. If the Senator will yield, I will supply it.

Mr. McKELLAR. I am perfectly willing to have the Senator do so.

Mr. GEORGE. The Senator omitted the clause which in substance at least provides "where no other method is provided by the constitution or laws."

Mr. McKELLAR. That is absolutely cured in the statute of 1917, where the governor of the State is given authority to fill all vacancies. What can be broader than that? The answer that opponents of Mr. NYE make is, first, that the legislature did not intend to give to the governor the power to appoint in this particular case.

The next proposition, boiled down, is that even if it was the intention of the legislature to give and even if they did in words give the governor the right to fill a vacancy, then it is void, because this office is not a "State office" as used in the statute. I want to address myself to those two propositions, which I regard as controlling.

The first question is as to the intention of the legislature. As we all know, for more than a quarter of a century, at least within my recollection, up until the adoption of the seventeenth amendment, the election of Senators by the people was a topic of discussion throughout this country. Writers, statesmen, newspapers, magazines, all discussed it. At first it had little following, but as the years passed by the idea grew, until on May 16, 1912, the resolution providing for the seventeenth amendment was adopted by the Congress, and in 1913 was ratified by a sufficient number of the States to make it the supreme law of the land. I call attention to the fact that after the passage of that resolution by the Congress, it was virtually conceded to be the law in this country, and by unanimous consent practically everybody withdrew his objection to it, and especially out West, where the people had early adopted a primary system, and where they believed in elections by the people rather than appointments by the legislature or by the governor. All discussion practically closed after the Congress acted. It was accepted everywhere. Legislatures generally conformed to its provisions without question, and with but little discussion.

By the time the proposed amendment got to the North Dakota Legislature, it was a fact conceded by everybody that the amendment ought to be ratified; and it was ratified.

Three or four years afterwards the Legislature of North Dakota met and reenacted the law giving full power to the governor of the State to make temporary appointments in cases of this kind. If it was not intended to meet the seventeenth amendment, why was it reenacted? But it is said by learned Senators that because the legislature did not discuss the matter, and did not say at that time that was the purpose, that it was not intended by the legislature to grant the governor this right. I say the language imports conclusively the power in the governor to make these temporary appointments, and we must take the language as we find it. I have no doubt in my mind that the reason it was not discussed was because it was a conceded question, because it was just what all those people wanted. The seventeenth amendment was what they had been fighting for for years. There was virtually no difference of opinion about it, particularly in the West, and that law was passed as a matter of course. It is clear to my mind that the language thus plainly shows that it was the purpose of the legislature to give the governor the right to appoint.

Let us consider the facts in this very case. The very reason of the proviso in the amendment is shown in this Nye case. As I understand, the Governor of North Dakota did not call an election immediately, because it would have been very expensive to his State, and for the last few years his State has not been prosperous. Therefore, to save the expense, he postponed the election by the people and made a temporary appointment, as he had a right to do under the constitution and laws of his State, and under the seventeenth amendment.

That was an admirable thing for him to do, if it meant a saving of money to the people of his State. It was just what the Congress and people intended should be done when they adopted the proviso to the seventeenth amendment. That was one of the very purposes, and it was a very proper and wise provision. It did not become incumbent upon the governor to call an election immediately. But he did call it at a convenient time, at a time when it would not be expensive, and then made a temporary appointment in carrying out the provision of the amendment. And, by the way, I believe he is the only governor who has recently acted in these cases who has made his appointment as a temporary appointment to fill a temporary vacancy.

Now we come to the next proposition, whether or not the office of United States Senator is a State office. I wonder how many Senators will really argue that it is not a State office? It has been held by the Senate from 1799 up to this good hour that it is a State office and not a Federal office. Senators on the other side pooh poohed the decision in the Blount case. The Blount case was decided by the Senate in 1799, and it was decided absolutely and for all time—and that decision has been adhered to ever since—that the office of United States Senator is not a Federal office under the Constitution. If it is not a Federal office, by force of necessity it is a State office, primarily. It partakes, of course, of the two, but primarily it is a State office, and has been so held throughout our history.

I want to call attention, if I may, to the last holding of this body on the subject of whether it is a State office or a National office. On page 9 of the Senate rules is shown a resolution offered in 1914 by Mr. Kern, then a Senator from Indiana, giving the form of a certificate of election, and it reads:

This is to certify that on the — day of ———, 19—, A——— B——— was duly chosen by the qualified electors of the State of ——— a Senator from said State, to represent said State in the Senate of the United States for the term of six years.

The very certificate which Mr. NYE brings to this body at this time is in those very words—that he is a Senator from North Dakota "to represent said State in the Senate of the United States" until next June, when the special election will be held. The office of Senator has been held to be a State office, and not a National office, by a uniform course of decisions in this body.

Now I want to call attention to some decisions of the Supreme Court of the United States. Our Supreme Court has had the question before it a number of times. The most famous case of all was the Burton case, involving J. Ralph Burton, a Senator from the State of Kansas. Mr. Justice Harlan delivered the opinion of the court in that case, and I take it that most of us feel that the decisions of the Supreme Court of the United States are binding on us. I quote an excerpt from the decision:

The seat into which he [Mr. Burton] was originally inducted as a Senator from Kansas could only become vacant by his death or by expiration of his term of office, or by some direct action on the part of the Senate in the exercise of its constitutional powers. This must be so for the further reason that the declaration in section 1782, that anyone convicted under its provisions shall be incapable of holding any office of honor, trust, or profit "under the Government of the United States" refers only to offices created by or existing under the direct authority of the National Government as organized under the Constitution, and not to offices the appointments to which are made by the States, acting separately, albeit proceeding, in respect of such appointments, under the sanction of that instrument. While the Senate, as a branch of the legislative department, owes its existence to the Constitution, and participates in passing laws that concern the entire country, its members are chosen by State legislatures and can not properly be said to hold their places "under the Government of the United States." (Burton *v.* United States, 202 U. S. 369–370.)

Here is a direct holding by our Supreme Court following the Blount case, which is referred to in the opinion, as I recall, and here is a direct holding by the Senate itself in our own rules and regulations governing the conduct of the body, that the office of Senator is a State office and not a Federal office. And yet Senators, relying on fine-spun technicalities, attempt to argue that it is not a State office.

Mr. Story in his work on the Constitution, says:

A question arose upon an impeachment before the Senate in 1799 whether a Senator was a civil officer of the United States within the purview of the Constitution, and it was decided by the Senate that he was not, and the like principle must apply to the Members of the House of Representatives. This decision, upon which the Senate itself was greatly divided, seems not to have been quite satisfactory—as it may be gathered—to the minds of some learned commentators. The reasoning by which it was sustained in the Senate does not appear, their deliberations having been private. But it was probably held that "civil officers of the United States" meant such as derived their appointment from and under the National Government and not those persons who, though members of the government, derived their appointment from the States or the people of the States. (Story on Constitution, vol. 1, sec. 793.)

The relation of Senators to the Senate is precisely similar to the relation of electors to the Electoral College, and a number of years ago the question of whether an elector in the Electoral College was a State officer or a national officer came up, and the Supreme Court of the United States in an opinion delivered by Mr. Chief Justice Fuller held that it was a State office. In that case the Legislature of the State of Michigan passed an election law providing for a general election in which there were named a great many State officers and included electors of President and Vice President of the United States. This law was attacked, and Mr. Justice Fuller, in his decision of the case, among other things, said:

In short, the appointment and mode of appointment of electors belong exclusively to the States under the Constitution of the United States. They are, as remarked by Mr. Justice Gray in re Green (134 U. S. 377, 379), "no more officers or agents of the United States than are the members of the State legislatures when acting as electors of Federal Senators, or the people of the States when acting as the electors of Representatives in Congress." A Congress is empowered to determine the time of choosing the electors and the day on which they are to give their votes, which is required to be the same day throughout the United States, but otherwise the power and jurisdiction of the State is exclusive, with the exception of the provisions as to the number of electors and the ineligibility of certain persons, so framed that congressional and Federal influence might be excluded. (McPherson *v.* Blacker, 146 U. S. 35.)

In the cases of United States *v.* Germaine (99 U. S. 510) and United States *v.* Mouat (124 U. S. 307) Mr. Justice Miller, speaking for the court in both cases, discusses the question of who are officers of the United States and says, in the latter case:

* * * under the Constitution of the United States all its officers were appointed by the President, by and with the consent of the Senate, or by a court of law, or the head of a department; and the heads of the department were defined in that opinion to be what they are now called, the members of the Cabinet. Unless a person in the service of the Government, therefore, holds his place by virtue of an appointment by the President or of one of the courts of justice or heads of departments authorized by law to make such an appointment he is not, strictly speaking, an officer of the United States.

Mr. President, a Senator is elected by the people of his State; his election is certified by the governor of the State; when he comes to this body he is spoken of as the Senator from his State, the Senator representing Tennessee, or West Virginia, or Georgia, as the case may be. We have carried that distinction in our everyday life ever since this body was created, and yet there are Senators here who are willing to say that a Senator is not a State officer, but a Federal officer. I am wondering what those Senators will say when they go back home. I am wondering if any Senator is going back to his State and announce to the people, "I am not your Senator; I am a Senator of the whole Republic. I owe you no allegiance that I do not owe any other State in the Union. I am a national officer; I am not a State officer."

I do not know whether they would do that quite as loudly back home as they do it here in the Senate when it is desired to keep out a man who has been duly certified by the governor of his State.

Mr. STEPHENS. Mr. President——

The PRESIDING OFFICER. Does the Senator from Tennessee yield to the Senator from Mississippi?

Mr. McKELLAR. I yield.

Mr. STEPHENS. A moment ago the Senator referred to the fact that a Senator is elected by the people of the State. He might have added, because he knows this quite well, that a Senator is commissioned by the governor of the State.

Mr. McKELLAR. I stated that.

Mr. STEPHENS. I did not catch it. I wanted to call the Senator's attention to a portion of the Constitution of the United States. He no doubt is entirely familiar with it, but I would like to have him discuss it in connection with his argument. There have been frequent references to the provisions of the Constitution. I have not heard all the arguments, but so far as I recall, this particular phrase has not been brought to the attention of the Senate. In Article II of the Constitution, section 3, which has reference to the Executive Department and to the President of the United States, I find this language:

He * * * shall commission all the officers of the United States.

As we all know, the President of the United States has never issued a commission to a United States Senator. I ask the Senator from Tennessee if he does not believe that the fact that this language authorizes the President to commission "all the officers of the United States" excludes the idea that a United States Senator should be designated as an officer of the United States.

Mr. McKELLAR. I think so, unquestionably. To show to what lengths our friends on the other side will be driven, I wish to cite an incident which occurred in this body several years ago. I think it was the case of a Senator from Iowa. A vacancy occurred and one man was appointed as Senator from that State, commissioned by the governor. His credentials were accepted and he was seated in this body. A short time afterwards he went back home and the next thing that the Senate knew, heard, or saw about it was another Senator sitting in the first Senator's place right in front of where the junior Senator from Mississippi is now sitting. Some question was asked about it and it developed that the first Senator appointed had resigned—and had resigned to whom? To this body? Not at all. He had resigned to the governor of his State, and the governor of his State had commissioned another Senator, and another Senator had come in

and taken his place, and all without the Senate's actual or official knowledge. If Senators are national officers and not State officers, surely they would have to resign or give some notice of their resignation to this body, but no notice was given to this body at all of the resignation of the one Senator and the appointment of his successor by the governor of his State.

There has been no decision brought forward, there has been no authority from any court, to sustain the position that a Senator of the United States is not a State officer. There are innumerable decisions from the Supreme Court of the United States running throughout the entire history of the country holding that he is not an officer of the United States. As Mr. Justice Harlan said in the opinion I read just a few moments ago, all officers of the United States must be commissioned by the President unless the Congress gives other authority. We are not commissioned by the President. We never have been commissioned by the President, and therefore, as it seems to me, it is absolutely idle, it is at variance with our entire history, the history of our Government from the very beginning, to say or to argue or to attempt to argue that we are national officers and not State officers. We are the representatives of the States primarily. While we legislate for the whole country, primarily we are State officers of the various States in this body and represent the various States here. Why? Take the matter of the confirmation of all Executive appointments. We know that under our rules all appointments from the State of Mississippi are sent to the two Senators from Mississippi, and so on through all of the States of the Union. Such appointments are sent to the Senators from Mississippi because of that fact. Everything that pertains to his State is sent to the Senator from Mississippi because of the fact that he is the representative of the State of Mississippi here, and it seems to me to be idle to talk otherwise about it.

Stripped of all technicalities, those fine-spun, most remarkably refined arguments on technical questions entirely, what is the truth about this matter? What is the plain everyday truth about it? That is what we should want. We want to do right so far as this appointee is concerned. What is the plain truth about it? It is that the seventeenth amendment to the Constitution of the United States authorizes the legislature of a State to empower the governor to make temporary appointments. The Legislature of North Dakota has authorized the governor of that State to make this appointment. He has made it. I hope some of the Senators who may be interested will listen to the statement I am about to make.

Four Senators have appeared in this body since the last session. I believe one of them appeared just before the close of the last session. The Senator from Massachusetts [Mr. BUTLER], the Senator from Indiana [Mr. ROBINSON], and the Senator from Missouri [Mr. WILLIAMS] have appeared since the last session, all through appointments by their several governors. I want to say to those three Senators, and I say it with the utmost respect and deference, that if the Nye appointment is illegal, in my judgment their appointments are illegal, because the statutes in their respective States are not as full and complete as is the statute in the State of North Dakota. I think their appointments are good, just as I think Mr. NYE's appointment is good. I do not think we ought to be straining at gnats in this matter. We all know perfectly well, and we might as well look it squarely in the face, that if Mr. NYE had been of exactly the same political persuasion as the other three gentlemen, there would have been no question raised about his appointment by the majority party.

I want to call attention for just a moment to a statement made by the Senator from Georgia [Mr. GEORGE] on last Saturday in discussing the question of temporary appointments. By the way, I am glad to see the Senator from Ohio [Mr. WILLIS] is present. I will start out by taking his case first because he might leave before my discussion is closed. The Senator from Ohio was appointed as a Member of this body and when he came here I was very happy to see him appointed for he is an excellent Republican Member of this body. He is as good a man as a Republican can be. I think highly of him. I want to read the credentials his governor sent to this body when he was appointed. They provide that the governor does thereby—

commission him, the said FRANK B. WILLIS, to the United States Senate from Ohio as aforesaid, authorizing and empowering him to execute and discharge all and singular the duties pertaining to said office and to enjoy all the privileges and immunities thereof for the unexpired term—

Not for a "temporary vacancy," not for any vacancy but—

for the unexpired term of Warren G. Harding, resigned.

Mr. WILLIS. Mr. President, will the Senator give me the date of the document which he has just read?

Mr. McKELLAR. The Senator's present job is not in jeopardy, but Comptroller General McCarl might be interested if the Senator's appointment was illegal, as I understand the Senator now claims the appointment of Mr. NYE is illegal. If that be true, the Senator may have to refund to Mr. McCarl some of the salary that he drew during the time he held that appointment. I hope he will not have to do so. I am on the side of the Senator in that controversy.

Mr. WILLIS. I simply want to call attention to the fact that the person who is now addressing the Senate took his seat after he had been elected to the Senate in 1920, and he took the place on the 13th day of January, having been appointed to fill a vacancy from the 13th of January until the 4th of March.

Mr. McKELLAR. Oh, no. Under the terms of the appointment under which he proceeded it was wholly unnecessary for the people of Ohio to elect him, because he was appointed for the unexpired term for which the late Senator Harding had been elected.

Mr. WILLIS. I hope the Senator will stick to the fact that the Senator now addressing the Senate on the present occasion was elected to the Senate at the same time the late Mr. Harding was elected to the presidency.

Mr. McKELLAR. Yes; I so understand.

Mr. WILLIS. And that he was appointed following the election. Having been elected in November, following the election he was appointed by the Governor of Ohio to take his place here on the 13th day of January, and served under that appointment only until the 4th of March, or about six weeks.

Mr. McKELLAR. The unexpired term. Let me read the Senator the amendment. We are talking about technicalities now. Here is what the amendment gave the Governor of Ohio power to do:

Provided, That the legislature of any State may empower the executive thereof to make "temporary appointments."

He did not make a "temporary appointment." He made a permanent appointment for the whole of the unexpired term. If, as the Senator from Georgia and the Senator from Montana and the Senator from West Virginia argued, it was his duty to call an election immediately, that he had no other right, that he could make only a "temporary appointment," then manifestly under that contention the Senator from Ohio was illegally appointed. But that is a matter that will not come up unless the Senator brings it up himself by invoking a different rule in the Senate by voting against the seating of Mr. NYE. I do not think we need to go into that matter further at this time. I want to talk about the four other Senators who have been appointed.

Mr. WILLIS. I think the Senator ought to yield further to me, inasmuch as my name has been brought in here. I am anxious that the RECORD should show the facts—that is, that I was elected to the Senate in the November election of 1920, and that at the same election the then Senator Harding was elected to the Presidency of the United States. Following his election he desired to retire from the Senate, and I was appointed to take his place, taking the office on the 13th day of January, 1921, and serving under that appointment until the 4th day of March, and that was the end of the term of the then Senator Harding.

Mr. McKELLAR. I think that was well understood.

Mr. WILLIS. I want the RECORD to show it, and that the Senator from Ohio is not alarmed that there is to be any inquiry into that matter.

Mr. McKELLAR. If there should be an inquiry involving a refund, it would amount to but two or three months' salary, and, knowing the Senator's splendid financial condition, I know he would not be bothered about refunding that amount to Mr. McCarl.

Mr. GEORGE. Mr. President——

Mr. McKELLAR. I yield to the Senator from Georgia.

Mr. GEORGE. I was not quite sure what the Senator from Tennessee said that the Senator from Georgia had stated.

Mr. McKELLAR. I want to read that in a moment, so there will be no mistake about it. Before I do that I want to refer to the statute of Ohio. When I came to examine it it occurred to me that if my distinguished and able and eloquent friend the junior Senator from West Virginia [Mr. GOFF] had taken up the statutes of the four other States in the same way that he took up the statutes of North Dakota he would have ousted all four of those Senators and probably made my good friend the Senator from Ohio [Mr. WILLIS] pay back his salary.

Mr. GOFF. Mr. President——

Mr. McKELLAR. I want to read to the Senator what the statute of Ohio provides and what it has to say about authorizing the appointment:

When by death, resignation, or otherwise a vacancy occurs in the representation of this State in the Senate of the United States the same shall be filled forthwith by appointment of the governor, who shall have power to fill such vacancy by some suitable person having the necessary qualifications for a Senator.

Under that authority the present senior Senator from Ohio [Mr. WILLIS] was appointed, and I take it he had the necessary qualifications. The only questoin about it was that the governor appointed him, not for a temporary appointment, not to fill a temporary vacancy, as argued by the Senator from Georgia, but for the "unexpired term."

Mr. WILLIS. What was the length of the unexpired term?

Mr. McKELLAR. It was for about three months.

Mr. WILLIS. It was for only about six weeks.

Mr. McKELLAR. But they could have held two or three elections in Ohio in that time if the governor had so desired.

Mr. GEORGE. Has the Senator examined the laws of Ohio?

Mr. McKELLAR. I have not; but if I am wrong about it, I hope the Senator from Ohio will correct me.

Mr. GEORGE. The Senator from Tennessee is wrong in all the other cases practically that he has referred to, and I think the Senator ought to be a little careful.

Mr. McKELLAR. I will take my responsibility for that. What is the trouble about the law I have read from Ohio?

Mr. GEORGE. I ask the Senator if he has exhausted the law on that subject in the State of Ohio?

Mr. McKELLAR. I do not know. I do not think anybody could tell.

Mr. GEORGE. If that is all the Senator knows about the law of Ohio, he should be more careful. I mean this particular law—whether there is any more of it and whether there is any further provision of the kind.

Mr. McKELLAR. No; I have not examined it.

Mr. GEORGE. I think the Senator then in fairness ought to admit that so far as he knows that is the only law he knows of in Ohio on the subject and that he does not mean to say there may not be other laws.

Mr. McKELLAR. There may be. They may have a statute there amending this statute for all I know. I do not know. I do not keep up with the laws of Ohio, and I doubt if any other Senator does so, except the two Senators from Ohio.

Mr. WILLIS. Mr. President——

Mr. McKELLAR. I yield to the Senator from Ohio.

Mr. WILLIS. I do not regard the matter as of great importance, but since it has been the Senator's desire I will say that I would not be prepared, without opportunity to investigate, to state that that is all the law there is on the subject. I want to call the attention of the Senator to the fact that that is an act which was passed by the Legislature of the State of Ohio in response to the seventeenth amendment and in compliance therewith, so it makes the situation as to our State perfectly clear.

Mr. McKELLAR. That is exactly what the Senator from North Dakota desires to say here.

Mr. GOFF. Mr. President——

The PRESIDING OFFICER. Does the Senator from Tennessee yield to the Senator from West Virginia?

Mr. McKELLAR. I yield.

Mr. GOFF. I will say to the Senator from Tennessee that the only purpose in referring to the statutory laws of the other States was to show the legislative construction which those States had seen fit by affirmative legislation to give to the seventeenth amendment. There was no argument advanced as to the constitutionality of those enactments, for the reason that that issue was not before the Senate, and I do not think it is before the Senate now. If there were error in the past, that is all the more reason why we should, by the light of that mistake, guide ourselves free from repeating it in the present day.

Mr. McKELLAR. Well, Mr. President, I want to read the argument that the Senator from West Virginia made about this matter. I read from the CONGRESSIONAL RECORD of January 7, on page 1265. The Senator from West Virginia [Mr. GOFF] said:

Mr. President, I was saying when the last interruption occurred that if the Legislature of the State of North Dakota had intended to incorporate into its laws on March 15, 1917, the provisions of the seventeenth amendment to the Constitution, either by express reference or by the language used, it would not have given the governor power to fill a vacancy when the amendment itself authorized the legislatures of the several States to confer upon their respective governors—

And I want to call the Senator's especial attention to what follows—

the power only to make "temporary appointments"—

Mr. GOFF. "Until the people should fill such vacancies by election."

Mr. McKELLAR. Wait a moment.

to make temporary appointments until the people should fill such vacancies by election.

That same argument was made by the Senator from Georgia [Mr. GEORGE].

Mr. GEORGE. Mr. President, I did make that argument. Do I understand that the Senator from Tennessee makes any other argument?

Mr. McKELLAR. If the Senator will wait he will see the argument I am going to make about it.

Mr. GEORGE. The Senator mentioned my name, and I think I have a perfect right to ask him if he means to make the argument that the legislature of the State itself has the power to authorize the governor to make anything else but a temporary appointment until the people shall elect?

Mr. McKELLAR. If the Senator from Georgia had been listening to me he would have understood that I meant to make no such argument; but I mean to uphold his argument and the argument which the Senator from West Virginia previously made, that the power to appoint applies only to "temporary appointments." The Senator was perfectly willing in the case of the other Senators, and the Senate seems to have been perfectly willing in the case of the other three Senators to accept not a temporary appointment but virtually a term appointment. I want to call attention to the cases of the other three Senators.

Mr. GEORGE. Mr. President, since the Senator from Tennessee has stated that the Senator from Georgia seems to be virtually willing to accept something in another case which he rejected in this case——

Mr. McKELLAR. Oh, no.

Mr. GEORGE. There is no other interpretation to be put upon the Senator's language.

Mr. McKELLAR. Mr. President, I decline to yield for an interruption of that kind.

Mr. GEORGE. Very well; then I will follow the Senator.

Mr. McKELLAR. Very well.

The PRESIDING OFFICER. The Senator from Tennessee declines to yield.

Mr. McKELLAR. I wish to refer to the case of the junior Senator from Missouri [Mr. WILLIAMS]. I read from the act of the Legislature of Missouri approved March 23, 1915, as follows:

Whenever a vacancy in the office of Senator of the United States from this State exists, the governor, unless otherwise provided by law, shall appoint a person to fill such vacancy, who shall continue in office until a successor shall have been duly elected and qualified according to law.

My point is that that does not conform either to the argument of the Senator from West Virginia [Mr. GOFF] or the Senator from Georgia [Mr. GEORGE] in reference to the power of the legislature to enact legislation authorizing the governor to appoint. Here is what the Senator from Georgia said about it:

The seventeenth amendment makes it mandatory upon the governor that upon the happening of a vacancy he shall issue his writ of election.

"Makes it mandatory upon the governor to issue his writ of election."

Mr. GOFF rose.

Mr. McKELLAR. Just one moment. Let me finish this matter.

The Senator from Georgia continued:

The amendment gives one permissive authority to the legislature of a State and that is to enable the legislature, if it elects so to do, to empower the governor to fill the office temporarily until the people can elect as the legislature may direct.

According to that rule—and it is a rule in which I concur; I concur in what both the Senator from West Virginia and the Senator from Georgia have stated on that subject—measured by that yardstick, that the governor has the right only to make a "temporary appointment," this Missouri law is manifestly unconstitutional and void, because it gives the power to fill not a "temporary vacancy" but a vacancy during the term. That is the case of the junior Senator from Missouri. His case could be put in quite the same category with the case of Mr. NYE.

Mr. GEORGE. Mr. President, while the Senator is looking for his notes——

The PRESIDING OFFICER. Does the Senator from Tennessee yield to the Senator from Georgia?

Mr. McKELLAR. I yield.

Mr. GEORGE. I wish to say that if the Senator was agreeing with what I said and not imputing to me any motive or intention to apply one rule to Mr. NYE and to refuse to apply the same rule to some other Senators, then I have nothing further to say.

Mr. McKELLAR. Oh, no; the Senator from Georgia is not applying that rule, but the majority of this body is applying that rule. No question was raised about the other appointments. Take the case of the Senator from Massachusetts [Mr. BUTLER].

Mr. GEORGE. Well, Mr. President——

Mr. McKELLAR. Just one moment.

Mr. GEORGE. The Senator does not impute to me any purpose to apply one rule in one case and another rule in a different case.

Mr. McKELLAR. Not at all; I am upholding the Senator so far as I know how. [Laughter in the galleries.]

Mr. GEORGE. The Senator from Tennessee is having a hard time.

Mr. McKELLAR. I have a hard time upholding the Senator from Georgia because I think he is wrong in his conclusions, but he is right in his argument. He has correctly interpreted the law, but he does not give it its proper effect.

The PRESIDING OFFICER. The Senator will suspend for a moment. The Chair is required under the rules to admonish the galleries that manifestations of approval or disapproval are not permitted.

Mr. McKELLAR. Now, Mr. President, I come to the case of my distinguished friend from Massachusetts [Mr. BUTLER], a man whom I esteem very highly, a man who comes here appointed by the governor of his State just as Mr. NYE was appointed by the Governor of North Dakota. According to the rule laid down by my distinguished friend from Georgia and my distinguished friend from West Virginia, the seat of the Senator from Massachusetts is in the same sort of jeopardy that Mr. NYE's is. Let me read from the law of Massachusetts. Listen to this:

Upon failure to choose a Senator in Congress or upon a vacancy in said office, the vacancy shall be filled—

Does it say a "temporary vacancy?" No. I call the attention of the Senator from Georgia and the Senator from West Virginia particularly to this provision:

shall be filled for the unexpired term at the following biennial State election, providing said vacancy occurs not less than 60 days prior to the date of the primaries for nominating candidates—

The Senator from Massachusetts has come here under a commission from the governor of his State, not to fill a temporary vacancy, the filling of which is authorized by the Constitution of the United States, but he has come here to fill out an unexpired term of nearly two years. Talk about technicalities! How in the world are Senators going to apply a technicality to Mr. NYE of the kind that has been suggested and overlook this glaring instance?

Mr. GEORGE. Mr. President, I know the Senator from Tennessee——

The PRESIDING OFFICER. Does the Senator from Tennessee yield to the Senator from Georgia?

Mr. McKELLAR. I yield.

Mr. GEORGE. I know the Senator from Tennessee does not want to state a matter not in conformity with the actual facts.

Mr. McKELLAR. Indeed, I do not.

Mr. GEORGE. I know that is true.

Mr. McKELLAR. If I have made a mistake, I will be glad to have the Senator call my attention to it.

Mr. GEORGE. I am not defending the right of the Senator from Massachusetts [Mr. BUTLER] to a seat in this body. That question is not involved in this case at all; I have nothing to do with it; but the Senator did not read the statute——

Mr. McKELLAR. I did not read all of it.

Mr. GEORGE. Just one moment. The language which the Senator read refers to an election by the people to fill the unexpired term. After that language this occurs:

Pending such election, the governor shall make a temporary appointment to fill the vacancy, and the person so appointed shall serve until the election and qualification of the person duly elected to fill such vacancy.

I undertake to say that no more apt expression could be put into the law by any American State. The only question that can arise at all is whether the deferring of the election to so late a day after the happening of the vacancy constitutes a compliance with the Federal Constitution or whether it is an attempt to circumvent and evade the Federal Constitution.

Mr. McKELLAR. Now, Mr. President, I will read, in answer to the statement of the Senator from Georgia, a statement made by the Senator from Georgia on last Saturday. He now admits by his statement the Governor of Massachusetts had the right under a Massachusetts statute to make the appointment until the next biennial election, a period of about two years. Here is what he had to say about the same subject on Saturday:

The seventeenth amendment makes it mandatory upon the governor that upon the happening of a vacancy—

"Upon the happening of a vacancy"—

to issue his writ of election.

Mr. WILLIAMS. From what page of the RECORD is the Senator reading?

Mr. McKELLAR. I read from page 1748. The Senator from Georgia said that the seventeenth amendment makes it mandatory upon the governor to issue his writ of election. He continued:

The amendment gives one permissive authority to the legislature of the State, and that is to enable the legislature, if it elects so to do, to empower the governor to fill the office temporarily—

Is a two-year term a temporary appointment?

until the people can elect as the legislature may direct.

In the Nye case, Senators, the governor has already called an election. It is to take place, as I recall, in June next. The call has been issued so as to save the people of North Dakota a large sum of money by holding the election at a time when a general election is being held. It has been called in direct accord with the seventeenth amendment. Yet technicalities are urged in this case. They were not urged in the case of the Senator from Massachusetts, who has been appointed for practically two whole years, and about whose appointment there is nothing temporary. He was admitted to the Senate without a word; he is holding his seat without a word of protest; and so is the Senator from Indiana [Mr. ROBINSON], so is the Senator from Missouri [Mr. WILLIAMS]. How does it happen that technicalities of the kind that have been urged here against Mr. NYE were not urged in reference to the other Senators who have been appointed?

I wish to say to the Senator from Massachusetts, I think his appointment is good, just exactly as I think the appointment of Mr. NYE is good, but if I held the view that has been expressed here by the proponents of Mr. NYE'S exclusion, that it was the duty of the governor immediately to issue a writ of election and call an election, I could not take that view about the Senator from Massachusetts or the Senator from Indiana or the Senator from Missouri. The two views are inconsistent. If it was a mandatory duty of the governor to call an election to fill this vacancy, then manifestly all of the other appointments are absolutely void.

I call especial attention to this matter, not for the purpose of criticizing any of the estimable gentleman who are here serving under appointments of their State governors.

By the way, I do not believe I concluded my discussion of the case of the Senator from Missouri [Mr. WILLIAMS]. For him I entertain the highest respect and esteem and I assure him I am not trying to raise any question as to his right to his seat. I have brought his case up for the purpose of showing that technicalities could be urged against his appointment, however, and the appointment of other Senators, just as they are being urged here to prevent the young Senator from North Dakota taking his seat.

Mr. President, that young Senator from North Dakota comes here as a man of good character, as a man of standing in his State. Not a word has been uttered against him. No reason has been given for his not taking his seat. He is duly commissioned by the governor under a statute that authorizes him to fill all vacancies, in direct accord, as it seems to me, with the Constitution of the United States and the constitution and laws of the State of North Dakota. Yet to-day we have heard technicalities urged against him; and if men had designs against the Senator from Massachusetts taking his seat, if they believed that he ought not to take his seat, the same sort or similar technicalities could be urged against him.

Let us be fair. It is a great thing to be a Member of the United States Senate. It is a great honor to any man to achieve, whether by appointment or by the election of the people. Ought we not to pause, Senators, before we turn down a man that the governor has commissioned in his honest judgment, believing that he was entitled to make the appointment?

I ask for fair play. I do not think technicalities should be interposed in the case one way or the other. I think all four of these men have been duly appointed, and ought to be the

accredited agents and representatives of their States in this body. Why should they not be? Why should the Senator from Massachusetts vote to prevent the Senator from North Dakota from taking his seat, when he himself is here on a commission that appoints him not to fill a temporary vacancy but for the unexpired term, under an appointment not a whit more valid than the appointment of the Senator from North Dakota?

Senators, simply because we have the power of numbers, simply because the majority may be driven, this thing ought not to be done. We ought to be fair to this young gentleman. I never saw him until yesterday, I believe, when he made himself known to me. I know very little about him; but everyone says that he is a man of high character, that he is a man of ability, that he is a man of courage. Not a word has ever been said against him. No imputation of immoral conduct of any kind, nature, or description has been made against him. No reason has been given why he should not be here, except, perhaps, that he is not in accord with the views of a large number of Senators on the other side of the Chamber. Under those circumstances it seems to me it would be wrong for us to turn out this splendid young representative of a great State of the West. We ought to pause before we do it. I do not want it on my conscience. I shall not have it on my conscience. I think he is just as much entitled to his seat as is Mr. BUTLER, Mr. ROBINSON, or Mr. WILLIAMS. I shall vote to seat him.

Mr. UNDERWOOD. Mr. President, I do not intend to detain the Senate very long with a statement of my views in regard to this case. The question is of such grave importance, however, that I do not care simply to vote without saying why I vote, because there is a decided division of sentiment in the Senate on this subject.

So far as I understand the case before the Senate, it is not a political case. As I understand it, the political equation does not enter into the case on either side of the Chamber. The only question involved is whether, under the Constitution and the laws of the United States, the appointee of the Governor of North Dakota is entitled to take his seat as a Member of this body at this time.

The point of view that I desire to state may have already been expressed in the debate that has gone on in the Senate, as I have been absent in committee meetings part of the time; but I desire to state briefly the reasons for the conclusion I have reached in regard to this matter.

Mr. President, I rejoice that I live in a country that is governed fundamentally by law and not by men. The government of this country is the Constitution of the United States and the laws that are made under it. There is no source of authority higher than the Constitution and the laws.

The government of our country—that is, the laws—may be changed by the people of the United States in all particulars save one. It is not necessary for an oppressed people in this country to come out of oppression by raising the flag of revolution. There are orderly methods by which their rights may be achieved and maintained, but there is one particular in which even the sovereign people of these United States have no power to change the law governing them, and that is in the matter of equal representation of the States in this body.

In the original compact made between the States in order that we might have a more perfect Union it was agreed, to satisfy the smaller States and allow them to be assured that the larger States would not oppress them in the future, that every State in this Union should have equal representation in the Senate of the United States.

The last clause of Article V of the Constitution of the United States says:

> That no State, without its consent, shall be deprived of its equal suffrage in the Senate.

Suffrage is the power to vote. A State shall not be deprived without its consent of its equal power to vote in the United States Senate. What did that mean? It did not mean that at some times or in some way we may have equal representation—no! The lawyers in discussing this case have repeatedly said in the argument on the floor of the Senate that these statutes must be taken by their four corners, and we must judge within the terms of the law what the law means. In reply to that I can only say that we must take the Constitution by its four corners and judge within the Constitution what the Constitution meant when it said that there shall be equal suffrage in the Senate of the United States.

I know of no other way of determining what was meant by the men who wrote the Constitution and what was meant by the people of the States when they ratified it than within the Constitution itself. In Article I, section 3, we find that question answered. It says:

> The Senate of the United States shall be composed of two Senators from each State, chosen by the legislature thereof, for six years; and each Senator shall have one vote.

Further on in the same section there is a statement to this effect:

> If vacancies happen by resignation, or otherwise, during the recess of the legislature of any State, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

When the Constitution decided that every State should have equal representation, and that it should not be deprived of it except by its own consent, it said that in Article V.

Mr. CARAWAY. Mr. President, may I ask the Senator a question?

The PRESIDING OFFICER. Does the Senator from Alabama yield to the Senator from Arkansas?

Mr. UNDERWOOD. Yes.

Mr. CARAWAY. It left the manner of selecting the Senators to the States, did it not?

Mr. UNDERWOOD. Yes.

Mr. CARAWAY. The Senator would not be willing now to say that if a State had neglected temporarily to send a Senator here the Senate itself could fill the vacancy, would he?

Mr. UNDERWOOD. Oh, no. I will answer the Senator's question if he will just listen to me. The Senator is a little ahead of my argument; but if the Senator can show conclusively that any State in this Union has consented not to be represented on the floor of the United States Senate, of course, I think his point would be well taken. I want proof, however, of the fact that it has consented, and I am coming to that.

Mr. CARAWAY. Mr. President——

Mr. UNDERWOOD. I will answer the Senator in a moment. His point is one that should be considered, as to whether the State has consented, and that is the real gist of this question.

Mr. CARAWAY. May I ask the Senator whether that is not the only question here?

Mr. UNDERWOOD. I want to lay my predicate before I come to the argument. I can not argue my case until I state it.

As I said, we have Article V of the Constitution, which says that every State shall have equal suffrage in the Senate; and then we must determine what was meant by the men who made the Constitution when they said that the States should have equal suffrage here, and that even the power of all the people of the United States united in every State save one could not deprive that one of equal suffrage in this legislative body without its consent. When we seek to see what the Constitution says, we find in Article I, section 3, that it is provided that the legislature shall elect two Senators, and that in the case of a vacancy the governor shall appoint.

Up to that time, in my judgment, in the absence of repudiation on the part of a State of a desire to have two Senators sit in this body, the power of appointment was vested in the governor by the Constitution of the United States itself, regardless of State action, unless, as I say, the State itself by affirmative action consented to withdraw. That gave the equal representation which the Constitution contemplated, the right of the legislature to elect, and, in the case of vacancy, for the governor immediately to appoint, not at some subsequent period, but immediately to appoint, in order to hold the balance of power in this body, in order that the smallest States might have their check in the consideration of legislation in this body.

That was the condition until the seventeenth amendment was adopted, and I think I can say without contradiction that if the seventeenth amendment to the Constitution of the United States, which took away from the legislature the power to elect and provided that the people of the States themselves should elect, so far being entirely within the terms of the Constitution, had merely provided that in the happening of a vacancy it should not be filled except by a general election, the amendment would have been violative of the Constitution itself and would have been a letter of the law that was unwritten, because the one pact you can not violate is that by which the States are guaranteed equal representation.

I think that is perfectly apparent. Let us go a step further and put the case on all fours. Suppose in adopting the seventeenth amendment it had been proclaimed by Congress and ratified by the people providing that Senators should be elected

to this body only at a general election, which happens every two years, and by the people, and suppose a Senator had died the day after election. Then, of necessity, there would have been a vacant seat in the Senate of the United States for two years, with no power to fill it. Is there any Member of this body who will say that that provision would have been within the terms of the original Constitution, which provided that there should be equal representation in the Senate, and that it should not be taken away from any State? I do not think anyone would be so bold as to assert that conclusion. The drafters of the seventeenth amendment recognized that fact. If I recollect aright, it was in that form when it was originally introduced, and it was amended so as to provide that the governor might appoint if the legislature so provided. I will read the amendment. After providing for the election of Senators by the people, the seventeenth amendment provides:

> When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies.

That is within the terms of the original pact.

> *Provided*, That the legislature of any State may empower the executive thereof to make temporary appointment until the people fill the vacancies by election as the legislature may direct.

They put that clause in the seventeenth amendment to make it conform to the limitation in the fifth Article of the Constitution of the United States.

Mr. GEORGE. Mr. President——

The PRESIDING OFFICER. Does the Senator from Alabama yield to the Senator from Georgia?

Mr. UNDERWOOD. I yield.

Mr. GEORGE. The Senator, of course, recognizes the fact that the seventeenth amendment itself would have been a grant by the States to the Federal Government. It would have been a later constitutional grant. If there had been any conflict, it would have control over the prior fifth amendment.

Mr. UNDERWOOD. The Senator was not here when I started my remarks, and that is just exactly what I say is not so. I deny that proposition. That is exactly the argument I make.

Mr. GEORGE. Then I understand the Senator to take the position that no grant could have been made——

Mr. ROBINSON of Arkansas. Will the Senator from Alabama yield to me?

Mr. GEORGE. In just a moment. I may have misunderstood the Senator. Was the Senator speaking of the provision of the Constitution which provides that it can not be amended so as to deprive any State of equal representation?

Mr. UNDERWOOD. I say that the Constitution of the United States carries an inhibition in itself that prevents any power in this country from taking away from any State equal representation on the floor of the Senate, except by the consent of the State itself.

Mr. GEORGE. Absolutely; but suppose all of the States had consented to a subsequent grant of power. There must have been a consent, of course.

Mr. ROBINSON of Arkansas. Mr. President, will the Senator yield?

Mr. UNDERWOOD. I yield.

Mr. ROBINSON of Arkansas. Does the Senator from Georgia say that by an amendment to the Constitution the States could be deprived of their equal representation in the Senate without their consent?

Mr. GEORGE. Not unless all of them consented.

Mr. UNDERWOOD. That is what I am coming to.

Mr. GEORGE. Because that is the limitation on this amendment.

Mr. UNDERWOOD. Now, we come right down to what I have been trying to lay my predicate to lead to. The Senator from Georgia agrees with me that you can not deprive North Dakota of its representation in the Senate without its consent. I think we are all agreed on that proposition. I say that consent, of course, does not mean in the Senate Chamber when we enact the legislation submitting a constitutional amendment to the people. It must mean the consent of the people of the State, not to-day, or to-morrow, but their consent to be deprived of equal representation at all times.

Mr. GEORGE. Mr. President, the Senator from Alabama, who has the same mind on the fundamental proposition that I have, of course, will pardon me. My conception of the matter is simply this: That no State shall by law be deprived of its equal right of suffrage in the Senate, but I concede, and I conceded yesterday, that no law made expressly for that purpose, or no unreasonable construction put upon a law, could be sustained if it did have the effect of depriving a State of its equal representation.

Mr. UNDERWOOD. The Senator stands on a law. I do not agree with him. I say this pact was the binding cord which made this Union possible; it was the irrevocable bond that was agreed to in order that we might have a more perfect Union, and I contend that it is not in the power of any man, or any set of men, to deprive any State in the Union of its protection under that bond, except by its own consent, and that is a consent which continues to be a consent.

Mr. CARAWAY. Mr. President——

The PRESIDING OFFICER. Does the Senator from Alabama yield to the Senator from Arkansas?

Mr. UNDERWOOD. I yield.

Mr. CARAWAY. I do not think I follow the Senator, and, of course, it is my fault. Is it the contention of the Senator from Alabama that the provision in the seventeenth amendment to the Constitution which provides that a governor may appoint only after the legislature has authorized him so to do is without effect, and that the governor has the inherent right to make the appointment?

Mr. UNDERWOOD. I am coming to that, if the Senator will allow me. It is perfectly clear to my mind, if not to the minds of my brother Senators, that we have an irrevocable pact guaranteeing equal representation, and that we must live up to the terms of that pact.

Mr. CARAWAY. Let us concede that. Then is it the Senator's contention that the governor has the right to make the appointment, notwithstanding the fact that the Constitution says he may do it only after the legislature has so empowered him to do?

Mr. UNDERWOOD. I can not answer the question in the language of my colleague, but if my colleague will allow me to answer the question in my own way, I will endeavor to do so.

Mr. CARAWAY. It strikes me that the question naturally forces itself to an answer.

Mr. UNDERWOOD. Surely it forces itself to the answer. The Senator is exactly right, that it requires an answer, but I want to answer it in my own way, and not in the way the Senator from Arkansas invites me to answer it. The Senator is exactly right in saying that there must be consent shown, but what I say is this: That the Federal Government has not the power, under this pact, to fix the terms of consent. That is probably where I differ with my friend from Arkansas. I say that the Federal Government has not the power to fix the terms of consent under the seventeenth amendment.

Mr. CARAWAY. The Senator's contention, then, is that the provision of the seventeenth amendment which gives the governor the power to appoint only when the legislature should authorize him so to do is absolutely void?

Mr. UNDERWOOD. It would be void if I had the Senator's viewpoint of the question, but I have not his viewpoint, because I am prepared to give it a construction which will prevent it from being void.

Mr. CARAWAY. The thing I had in my mind was that I was opposed to saying that the States had absolutely no way to protect themselves, and that whatever the Senate says, a State must accept. I think the States have some kind of right under the Constitution to say that they could select their representatives a certain way. The Senator evidently does not agree with me.

Mr. UNDERWOOD. The Senator does not understand me to say that, I am sure, because although I may not always be clear in my language, I know that I made the point clearer than that.

Mr. CARAWAY. Let me ask the Senator this question, then: Is it the Senator's contention that this provision, that the governor shall not appoint a Senator unless the legislature shall authorize him so to do, is absolutely void?

Mr. UNDERWOOD. I am coming to that question, if the Senator will allow me. The Senator wants to put me in the attitude, by his question, of saying that the governor of a State can thrust on an unwilling people a representative that they do not want. That is not the issue, and I am not going to satisfy the Senator by saying yes or no to that. It is a question as to whether the people of that State are entitled to have their great constitutional rights represented here by two men.

Mr. CARAWAY. And who shall determine that—the people of the State, or a Senator here in the Senate? That is what I want to know.

Mr. UNDERWOOD. If the Senator had allowed me, before now I would have answered that; but I can not answer it if he occupies the floor and I can not talk.

Mr. CARAWAY. I will not interrupt the Senator any more.

Mr. UNDERWOOD. I am delighted to have interruptions, but I want to reserve the right to answer a question in my own way.

Mr. GEORGE. Mr. President, will the Senator yield?

Mr. UNDERWOOD. I yield to the Senator.

Mr. GEORGE. I was going to ask the Senator, while he said that in this case he thought he should not be required to answer the questions suggested by the Senator from Arkansas——

Mr. UNDERWOOD. I did not say that. I did not say anything about "in this case." I said to the Senator from Arkansas that if he would allow me, I would try to answer his questions. I want time to talk, however. I can not answer if *he will not* give me the time to talk. In other words, I refuse to answer the questions out of the mouths of my friends. I have great respect for the legal ability and talent of both of my friends who have interrupted me, and I respect their opinions as lawyers, but I can not allow them to answer the questions in their own language.

Now we come down to the question of consent. The seventeenth amendment provides for the election of Senators by the people, on which we have no dispute. That was perfectly in accord with the general pact. But it provides in the last clause that the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancy by election. But that is not all. See what it says before we come to that proviso:

> When vacancies happen in the representation of any State in the Senate the executive authority of such State shall issue writs of election to fill the vacancies.

It contemplates an immediate election. Then to prevent a lapse of representation in the Senate it provides that the legislative authority may grant the right to the governor of the State to appoint somebody. The position I take is this: If we construe the seventeenth amendment to mean that an unwilling legislature or a partisan legislature might deprive the people of the State by its ipse dixit of the right of representation, I do not think that would be in accord with the original Constitution. More than that, I say in the construction of the seventeenth amendment, changing from the election of Senators by the legislature to the election of Senators by the people, that we must put such construction on the language used that, as nearly as may be, will come within the terms of the original pact and allow every State equal representation on the floor of the Senate at all times. I say we can not deprive a State of the Union of this equal representation by inaction, failure to act. Congress and the ratifying power had no power to construe their consent by inaction; but we have to show affirmative action to show that they gave their consent.

Mr. GEORGE. Mr. President, I would like to ask the Senator, with his permission, if he does not think the fact that North Dakota was one of the ratifying States, and therefore consented to the constitutional provision, has some bearing upon the general question?

Mr. UNDERWOOD. I do not know whether North Dakota was one of the ratifying States or not. I have not looked up that question; but I do not think the fact that they ratified shows an affirmative intent on their part to surrender their representation on the floor of the Senate. My State ratified the amendment, and it had hardly been ratified before the governor commissioned a man to come here to represent the State and he was rejected upon the floor of the Senate.

Mr. SWANSON. Mr. President——

Mr. UNDERWOOD. I yield to the Senator from Virginia.

Mr. SWANSON. May I see if I understand the Senator's contention? As I understand, it is that the Constitution gives each State the right to have two representatives and that the provision allowing the governor to appoint in order to accomplish that purpose continues operative until the legislature gives him power to appoint.

Mr. UNDERWOOD. Yes; he holds that power.

Mr. SWANSON. He holds it until the legislature gives him the power to appoint, because if by nonaction it did not do it a State would be deprived of equal representation in the Senate.

Mr. UNDERWOOD. Certainly.

Mr. SWANSON. The provision of the Constitution giving the governor the power to appoint so as to prevent inequality of representation in the Senate continues until the State acts and gives him the power so that it can not be deprived of representation by nonaction.

Mr. UNDERWOOD. Either the State must consent affirmatively that it will not have a man representing it here by gubernatorial appointment or the right exists under the original pact.

Mr. GEORGE. Then it was within the power of the States to have absolutely defeated the whole force and effect of the seventeenth amendment if they so elected.

Mr. UNDERWOOD. I think most of the States would have defeated it if they had taken the viewpoint of my friend from Georgia, but they did not take that viewpoint. They have generally, I think, not taken that viewpoint because they might provide for the appointment of men to fill vacancies. That was not their viewpoint in the construction of the act. Their viewpoint was that the power to appoint held. I concede that if there is any State in the Union that did not want to be represented on the floor of the Senate by an appointed Senator—and there are several—they had the right to give their consent in a lawful way by the action of the legislative body and the signature of the governor of their own State. But what I contend further is that consent must be given affirmatively, by affirmation of the State acting through its constituted authorities, and not by negation; that we can not presume that the State has given its consent to forfeit its represenation on the floor of the Senate. We have to assume that it demands its representation because that was in the original pact and it was entitled to the representation.

Of course I realize that that is not so much of an issue now, but at one time there was a temporary wave sweeping over the country expressive of the view that no governor should be trusted with the power of naming a man to represent a State on the floor of the Senate. The idea did not get very far. There are three or four States in the Union which by affirmative action have declined to give their governors the right to appoint or have taken away that power. In that way they could exercise the consent of depriving themselves of a seat on the floor of the Senate. North Dakota has not done that. North Dakota has passed no affirmative legislation saying that the governor of that State shall not fill a vacancy. It has not even been silent on the question. If it had done nothing I should say it would still retain the power under the original pact to fill the vacancy.

Mr. WALSH. Mr. President——

The VICE PRESIDENT. Does the Senator from Alabama yield to the Senator from Montana?

Mr. UNDERWOOD. Certainly.

Mr. WALSH. I would like to remind the Senator from Alabama that my State was without representation in the Senate at one time for two whole years. The governor of the State appointed some one to fill what was conceived to be a vacancy here, but the Senate held that the governor did not have any right under the circumstances to make the appointment.

Mr. UNDERWOOD. They did the same thing with reference to the State of Alabama, but I never agreed with the decision.

Mr. WALSH. Quite so. They did the same thing for the State of Pennsylvania. The Hon. Matt Quay came here at one time under an appointment by the Governor of the State of Pennsylvania, which had never by affirmative action declared that it wanted only one representative in this body; yet the Senate refused Mr. Quay a seat here. There was a third case. The State of Washington was refused a seat here. There was a man with a commission from the governor of his State in all three instances, but the appointment made, as it was contended at least, was not in conformity with the Constitution.

Mr. UNDERWOOD. I said when I took the floor that I recognize that this is a very much disputed point. Each of the cases to which the Senator has referred brought a contest to the floor of the Senate. Of course, the reasons given varied with the number of men who spoke, because we approach our conclusions from many different angles, which is one of the virtues or fallacies of human nature. Nevertheless it was never admitted by all and the contests continued. I never agreed to that viewpoint and I do not agree to it now. I do not know what a majority of the Senate may decide in this case, but from my viewpoint I think the original pact stands and that the Congress or the ratifying power has no right to violate that pact by depriving a State of equal suffrage on the floor of the Senate when the means that we recognized in the original draft of the Constitution are still exercised to fill a vacancy, unless a State by its own affirmative action consents to be without representation.

I admit that the States that have refused by their legislative action to allow the governor to appoint are lawfully deprived of their representatives, because the Constitution says that they can consent, and that is the way they can consent, in my judgment. The only way they can consent is by affirmative action on their own part in each State where the question may become involved. But North Dakota has given no such consent. She has not consented to such a proposition. If she has taken any action at all, and I am inclined to think she has, it is on the other side. She had a statute, if a statute was needed before the seventeenth amendment was passed, authorizing her governor to appoint "all officers," which, I understand, is contended to mean only State officers. Then the question is

whether this is a State office. I shall not go into the exigencies of that question, because my viewpoint does not hang on that. I think all that demonstrates is that North Dakota did not give its consent to be deprived of equal representation. On the other hand, if there was any exigency at all by reenactment of this statute authorizing the governor to appoint, it is an affirmation that it wanted its governor to appoint.

If that is the case, then when we come to consider this case as to whether we shall seat this gentleman or reject him should we take the broader viewpoint under the pact made in the original Constitution that cemented this Government together and recognize the fact that on this floor there should be equal suffrage at all times, or shall we take a viewpoint that is—and I do not say it in an offensive way—technical, that is within the musty volumes of the law, within the lawyer's technical reasoning, and find that a strict construction of the statute passed in North Dakota does not allow the governor to appoint. I recognize that we have to have rules of construction on legal points and that the courts and the lawyers have got to follow them in order to avoid confusion and bring about uniformity of decision. Of course, that is true. But I think there is no greater evil that can grow up in the body politic than for the courts and the legal machinery to attempt to tie the hands of fundamental principles by the close reasoning of legal technicalities.

With this proposition before us, with the viewpoint that under the original pact North Dakota is entitled to 2 votes on the floor of the Senate, I propose to resolve any doubt, if there is a doubt, in favor of giving her the representation to which she is entitled under the Constitution of my country. Therefore, when the time comes I shall vote to seat Mr. NYE as a Senator from the State of North Dakota.

Mr. FRAZIER obtained the floor.

Mr. BROOKHART. Mr. President, I suggest the absence of a quorum.

The VICE PRESIDENT. The clerk will call the roll.

The legislative clerk called the roll, and the following Senators answered to their names:

Ashurst	Fess	McKinley	Sheppard
Bayard	Frazier	McLean	Shipstead
Bingham	George	McMaster	Shortridge
Blease	Gerry	McNary	Simmons
Borah	Gillett	Means	Smith
Bratton	Glass	Metcalf	Stanfield
Brookhart	Goff	Moses	Stephens
Broussard	Hale	Neely	Swanson
Bruce	Harris	Norris	Trammell
Butler	Harrison	Oddie	Tyson
Cameron	Heflin	Overman	Underwood
Capper	Howell	Pepper	Wadsworth
Caraway	Johnson	Pine	Walsh
Copeland	Jones, Wash.	Pittman	Warren
Curtis	Kendrick	Ransdell	Watson
Deneen	Keyes	Reed, Pa.	Wheeler
Dill	King	Robinson, Ark.	Williams
Edge	La Follette	Robinson, Ind.	Willis
Ernst	Lenroot	Sackett	
Ferris	McKellar	Schall	

Mr. SHEPPARD. I desire to announce that my colleague, the junior Senator from Texas [Mr. MAYFIELD], is absent from the Senate on account of illness.

The VICE PRESIDENT. Seventy-eight Senators having answered to their names, a quorum is present.

Mr. CURTIS. Mr. President, if the Senator from North Dakota [Mr. FRAZIER] will yield to me, I should like to submit a proposal for unanimous consent.

The VICE PRESIDENT. The proposal will be read.

The Chief Clerk read as follows:

Ordered, by unanimous consent, That on the calendar day of Tuesday, January 12, 1926, and at not later than 3.30 o'clock p. m., the Senate will proceed to vote, without further debate, upon any amendment that may be pending, any amendment that may be offered, and upon the resolution, Senate Resolution 104, declaring GERALD P. NYE not entitled to a seat in the United States Senate from the State of North Dakota through the regular parliamentary stages to its final disposition.

Mr. ROBINSON of Arkansas. Mr. President, I think perhaps the time has arrived when an agreement can be reached. The debate has been proceeding for some days, and probably the arguments have about been exhausted. There are, however, a number of Senators who desire to make brief addresses, and some of them may desire to speak at considerable length. I am going to suggest to the Senator from Kansas that the request be modified so as to provide that after the Senate concludes its business on this calendar day and beginning tomorrow no Senator shall speak oftener than once nor longer than 15 minutes, so as to afford an opportunity for such Senators as desire to speak to do so before the hour to vote arrives.

Mr. DILL. I do not see why on to-morrow Senators should be limited to 15 minutes. I think there might be a limit of 15 minutes perhaps after a certain hour, but not that it should apply to the entire debate to-morrow.

Mr. ROBINSON of Arkansas. I merely suggested that limitation in order that one Senator would not take the floor and consume the entire time to the exclusion of other Senators who have an equal right to express their opinions. If any Senator desires that the suggestion be changed, I will be glad to change it. The request of the Senator from Kansas fixes the hour for voting at 3 o'clock, as I recall.

Mr. CURTIS. It fixes the hour at 3.30 o'clock p. m.

Mr. ROBINSON of Arkansas. That would afford opportunity for seven Senators each to speak half an hour. I think I will modify my request and ask that the proposed agreement be changed so as to provide that no Senator after the conclusion of to-day's business shall speak oftener than once or longer than 30 minutes.

Mr. CURTIS. That agreement will be perfectly satisfactory to me. I have made inquiry and found that there are at least five Senators who want to speak upon this subject. I would be willing to go further and agree that when the Senate shall conclude the business of the Senate to-day it shall take a recess until 11 o'clock to-morrow, in order to give every Senator an opportunity to speak who desires to do so. We have a special order fixed for 4 o'clock to-morrow afternoon, and I thought that fixing 3.30 o'clock as the time to vote would give those who desire to be heard an opportunity to speak.

Mr. ROBINSON of Arkansas. From the suggestions that have been made by the Senators around me, I think that a limitation of debate to half an hour will provide for all the Senators who desire to speak. Some of them may not take that much time.

Mr. NORRIS. Mr. President, may I interrupt the Senator from Kansas?

Mr. CURTIS. Certainly.

Mr. NORRIS. My attention was diverted, and I did not hear the reading of the proposed unanimous-consent agreement. Does it provide definitely for a time for voting or does it say on or before a certain hour?

Mr. CURTIS. It provides definitely for the time at not later than 3.30 o'clock.

Mr. NORRIS. I wonder if we can not agree to fix a time definitely?

Mr. CURTIS. I am perfectly willing to make it definite.

Mr. ROBINSON of Arkansas. Let us fix the hour at 3.30 o'clock.

Mr. NORRIS. Let us make it definite, and then put in a limitation of debate "except by unanimous consent."

Mr. HEFLIN. What objection would there be to fixing the hour to vote at 4 o'clock?

Mr. DILL. Or 5 o'clock?

Mr. CURTIS. There is a special order set for 4 o'clock.

Mr. MOSES. May I ask, in connection with the proposed agreement, what is the plan of procedure for to-day? Is the session to continue longer?

Mr. CURTIS. We wish to continue just as long as we can. I judge we can hold a quorum until half-past 5 or 6 o'clock. I am willing to agree to meet to-morrow at 11 o'clock, if that is satisfactory, so as to give every Senator plenty of time. An extra hour, I am quite sure, would afford ample opportunity for all Senators to speak.

Mr. DILL. Some Senators who have occupied the floor have consumed three or four hours, while other Senators have had no chance to express their views at all, and I do not know at this time why we should be shut off at 3.30 o'clock to-morrow afternoon when we are told that there are five Senators on the other side who want to speak.

Mr. CURTIS. I beg the Senator's pardon, but most of them are on the Senator's side of the Chamber.

Mr. DILL. I do not see why this matter should be rushed when some Senators have talked for three or four hours apiece.

Mr. ROBINSON of Arkansas. I suggest that the Chair submit the question.

The VICE PRESIDENT. Is there objection to the request for unanimous consent submitted by the Senator from Kansas?

Mr. CURTIS. I suggest, Mr. President, that the request be read again.

The VICE PRESIDENT. The request for unanimous consent will be again read.

The Chief Clerk read as follows:

Ordered, by unanimous consent, That on the calendar day of Tuesday, January 12, 1926, at 3.30 o'clock p. m., the Senate will proceed to vote, without further debate, upon any amendment that may be pending, any amendment that may be offered, and upon the resolution (S. Res. 104) declaring GERALD P. NYE not entitled to a seat in the United States Senate from the State of North Dakota, through the

regular parliamentary stages to its final disposition, and that after the Senate concludes its business to-day no Senator shall speak more than once or longer than 30 minutes upon the resolution or any amendment thereto.

Mr. NORRIS. I suggest to the Senator from Kansas that there be added the words "except by unanimous consent."

Mr. CURTIS. I will agree that those words be added.

Mr. NORRIS. I should like to say to the Senator further that I should dislike very much to have the Senate meet at 11 o'clock to-morrow, because of the committee meetings which will take place in the morning.

Mr. ROBINSON of Arkansas. There should be added to the agreement also that when the Senate concludes its business to-day it shall take a recess until 11 o'clock to-morrow.

Mr. NORRIS. Until 12 o'clock. It will be inconvenient for Senators who have committee meetings in the morning to attend before 12 o'clock.

Mr. BLEASE. Mr. President, I object to the immediate consideration of the request for unanimous consent.

The VICE PRESIDENT. Objection is made.

Mr. BLEASE. I do not expect to speak on the Nye case, but I think every Senator ought to have a fair show.

Mr. FRAZIER. Mr. President——

The VICE PRESIDENT. The Senator from North Dakota has the floor.

Mr. BLEASE. I am sorry, Mr. President, to have to object, but I do not believe in gag rule.

Mr. CURTIS. Then, I give notice that I shall ask Senators to remain here to-night just as long as possible.

Mr. BLEASE. I am perfectly willing to do anything that will facilitate the business of the Senate.

Mr. ROBINSON of Arkansas. Let me suggest to the Senator from South Carolina that the agreement which is now proposed will provide ample time for all Senators who desire to speak; at least no Senator who expects to speak has indicated that additional time will be required.

Mr. BLEASE. I am just, as a general rule, against anything like gag law; I object to it at this time, and I expect to vote against everything of that nature that comes up here during the whole six years that I am in the Senate.

Mr. HEFLIN. I want to suggest to the Senator that there is no gag rule about this. The whole Senate, except himself, is willing that the agreement shall be entered into. There does not seem to be any "gag" about that.

Mr. BLEASE. I am glad that there is one time when I can control the Senate. I thank the Senator. [Laughter.]

Mr. HEFLIN. I suggest that if we do remain here to-night it will probably be necessary to keep a quorum, and my good friend from South Carolina must be here all the time.

Mr. BLEASE. That will suit me fine. I am always willing to attend to business. [Laughter.]

Mr. FRAZIER. Mr. President, legal arguments against the seating of Mr. NYE have been expounded at great length. Likewise arguments for his being seated have been well set forth. I have been told by a number of Senators that they would like to vote for Mr. NYE if they could see their way clear legally to do so. I have been told that no politics would enter into this case, and I will frankly say that I believe some have honestly tried to keep politics out of it.

I have nothing but the highest respect for the opinions of those who honestly differ with me, and, naturally, opinions differ in a case of this kind. Opinions differ on points of law, as has been shown in this case. That is nothing strange, however. We frequently find even our much-exalted Supreme Court of the United States handing down divided opinion—sometimes so divided as to have five of those most eminent jurists of one opinion and four of them, equally as eminent, of an opposite opinion.

In the case of the seating of Mr. Glass, of Alabama, to which reference has been made, the records show that there was a divided report of the committee, and that after the question was debated on the floor for days the vote was divided, and he was refused a seat by the small margin of one vote. If there was so much of merit in the Glass case as to warrant so close a vote, it would seem to me that in this case there is vastly more legal merit and logical reason for votes for the seating of Mr. NYE.

Briefly, the great difference between this North Dakota case and the Alabama case, as I see it, is this:

First. That there is a clause in the North Dakota constitution, the supreme law of our State, which provides:

> When any office shall from any cause become vacant, and no mode is provided by the constitution or law for filling such vacancy, the governor shall have power to fill such vacancy by appointment.

There was no such provision as this in the constitution of Alabama.

Second. The North Dakota Legislature, in 1917, amended and reenacted a law relating to the filling of vacancies. In Alabama the law relating to the filling of vacancies was passed before the seventeenth amendment to the United States Constitution was adopted, but in our case this law was enacted in 1917, some four years after the adoption of the Federal amendment.

It has been stated here that this law was an old law, amended in 1917. It was; but the fact remains that it was reenacted in 1917, and therefore it seems to me that it applies to this case.

Mr. President, it seems to me that these provisions take this case entirely out of the case of Mr. Glass, of Alabama.

The vacancy law of North Dakota, reenacted in 1917, does not specifically mention United States Senators; but it does provide that all vacancies, with the single exception of members of the legislative assembly, shall be filled by appointment, and uses the words "all State and district offices."

Whatever we may think about the office of United States Senator being a Federal office or a State office or a combination of both, it seems to me we must admit that in so far as the election or appointment goes it is a State office. A Senator is elected by the voters of the State and gets his credentials from the State officials, or he is appointed by the governor of the State and receives his credentials from the Governor. If he resigns, his resignation goes to the governor—not to the President of the United States or the President of the Senate but to the governor of the State from which he comes.

Mr. President, there was a case in North Dakota—I think in 1910—of a vacancy caused by the death of a Senator and an appointment was made by the governor. Of course, that was under the old law. The Senator who was appointed sent in his resignation to the governor of our State, to take effect on a certain date. When that date came and the appointee came from North Dakota and his credentials were presented here on the floor of the Senate the Members of this body did not know that Senator Thompson had resigned until the credentials of the new appointee were brought in before the body.

Another thought occurs to me along this line in the discussion of the question of whether this is a State or a national office. An attorney came into my office this morning and said: "Has it occurred to you that a United States Senator elected by the people of his State is a State officer, at least until he has taken his oath of office down here in the Senate and has become a United States Senator?" And if he is a State officer until he takes his oath of office, at least he can not be a Federal officer until he takes his oath of office here. Our North Dakota law, I believe, covers the case.

Furthermore, Mr. President, it seems to me that the Senators who have practiced law—and most of them have, because the majority of them are attorneys—and who are accustomed to take either side of any case, argue it, and find precedent and law upon which to base their argument, ought to find precedent enough and law enough in this case to convince them that there is at least a reasonable doubt that the governor did act in good faith and that he did have the authority to make this appointment; and if there is even a reasonable doubt, Senators must admit that it should be decided in favor of the State, in order that North Dakota may have her constitutional right of equal suffrage in the Senate.

It has been held that this appointment is irregular. Mr. President, there have been a number of irregularities in the membership of this body since the organization of the United States Senate.

There is a provision in the Constitution of the United States which reads as follows:

> No person shall be a Senator who shall not have attained to the age of 30 years.

Note the word "shall." There have been four Members of this body who were not 30 years of age at the time they took their seats in this body.

The first was Armistead Thompson Mason, of Virginia, who entered the United States Senate January 3, 1816, aged 28 years 5 months and 30 days.

The second was Elias Kent Kane, of Illinois, who entered the United States Senate March 4, 1825, aged 28 years 8 months and 28 days.

The third was Stephen Wallace Dorsey, of Arkansas, who entered the United States Senate March 4, 1873, at the age of 29 years and 7 days.

The last was Henry Clay, of Kentucky, who entered the United States Senate November 19, 1806, aged 29 years 7 months and 7 days.

The story goes that some one questioned the age of Mr. Clay.

Mr. NEELY. Mr. President——

The VICE PRESIDENT. Does the Senator from North Dakota yield to the Senator from West Virginia?

Mr. FRAZIER. Yes; I yield.

Mr. NEELY. Does the Senator think that Henry Clay ever would have been permitted to sit in this body if the Senators who have spoken against Mr. NYE had been here and had a vote on the question and could have prevented him from occupying a seat here while he was under 30 years of age?

Mr. FRAZIER. Mr. President, of course that is purely a personal opinion, but it is my opinion that he would not.

The story is that some one questioned the age of Mr. Clay, and he said: "You can ask my constituents in regard to my age," apparently thinking that his constituents approved his choice as a Member of the United States Senate, whether he was of age or not.

Mr. BRUCE. Mr. President, may I interrupt the Senator for a moment?

The VICE PRESIDENT. Does the Senator from North Dakota yield to the Senator from Maryland?

Mr. FRAZIER. I yield.

Mr. BRUCE. Was it not John Randolph, of Roanoke, who said that to the Clerk of the House of Representatives when he appeared as a Member of that body and was asked his age?

Mr. FRAZIER. I did not understand the Senator's question, and I do not think I can answer it.

Furthermore, our President himself, it seems to me, has set some precedents in irregularities that have been approved by the majority of this body.

Back in President Grant's time, I think, an appointee came up for the office, I believe, of Secretary of the Treasury, and his appointment was objected to on the ground that through his business relations he was ineligible to the position, and he was not seated as a member of the Cabinet. In the appointment of Hon. Andrew W. Mellon as Secretary of the Treasury it seems to me there is no question but that his business connections would have barred seating him as a member of the President's Cabinet, and yet he was confirmed and is still a member of the Cabinet. So these irregularities will creep in; and whether or not we should be so technical as to keep a man out of a seat in the Senate because of mere technicalities is a question that each Senator will have to decide for himself, of course.

I want to go briefly into the history of the appointment of Mr. NYE.

A few days after the death of my late colleague, Senator Ladd, the newspapers began the discussion as to whether there was a provision in the North Dakota law for the appointment of a successor. The governor was interviewed, and the papers quoted him as saying that he thought he had the authority to make a temporary appointment, and that at any rate he would not call a special election, because it would cost in the neighborhood of $200,000, and the taxpayers of North Dakota could not well afford to stand the expense.

The governor did not ask the opinion of the attorney general of our State, because the attorney general happens to be politically opposed to the governor; and the governor stated on one occasion, as I recall, that there was no need of asking the opinion of the attorney general, because he knew what his opinion would be and did not care to leave it. That question was raised here by the junior Senator from West Virginia [Mr. GOFF].

A little later in the summer an opinion appeared in the North Dakota papers purporting to come from the senior Senator from New Hampshire [Mr. MOSES], chairman of the Republican senatorial campaign committee. Of course, there was no politics in this opinion; but I understand that the governor never asked the Senator from New Hampshire or anyone else for a legal opinion as to his authority in this case.

I want to read a part of the opinion that purported to come from the Senator from New Hampshire. This is a clipping from a North Dakota paper of October 5, 1925. The headline is:

Governor without power to appoint Senator.

There is an editor's note at the head of this story, as follows:

The following opinion on the question of the authority of Gov. A. G. Sorlie to appoint a Member of the United States Senate to succeed the late Senator Ladd was formulated at the instance of Senator GEORGE H. MOSES, of New Hampshire, chairman of the Republican senatorial campaign committee, and has for some time been before Governor Sorlie. It was presented through Senator MOSES for the information and guidance of the governor in the question at issue.

Has the Governor of North Dakota authority to fill by appointment vacancies in the United States Senate?

STATEMENT OF THE CASE

He goes on to set forth the death of the late Senator Ladd, and then some of the laws of North Dakota. He refers to the amendment to the constitution of our State, also to the seventeenth amendment to the Constitution of the United States; but one thing that the Senator from New Hampshire overlooked, or those who helped him prepare this brief overlooked, was that the 1917 session of the Legislature of North Dakota reenacted a law which provided for the filling by the governor of all vacancies, with the single exception of members of the State legislature. The Senator from New Hampshire overlooked that entirely.

He refers in his opinion to the Glass case, and says:

There remains for consideration the contention that the Senate will seat an appointee of the Governor of North Dakota if said appointee is acceptable to the Republican majority. This is the sheerest nonsense.

If there ever was a time when the Senate could have been expected to act from political motives it was in the case of Frank P. Glass, of Alabama. Having failed in his case it can hardly be expected now.

Of course, that is very logical reasoning on the part of the Senator from New Hampshire, that there was no politics in the Glass case, when we had a Democratic President and Democratic control of the Senate, and therefore with a Republican President and a Republican Senate there can not be any politics entering into this case. But the other day the junior Senator from Alabama [Mr. HEFLIN] intimated that at least a little politics entered into the Glass case.

There is a headline in this paper reading:

Should not trifle with the liberties of the people.

Then this is the closing paragraph of the Senator from New Hampshire [Mr. MOSES]:

The Governor of North Dakota, according to law, is required to take an oath to support the Constitution of the United States and the constitution of North Dakota. For the reasons, and upon the grounds set forth herein, it is clear that he would violate the provisions of both constitutions if he were to assume to make a senatorial appointment. It is a serious thing to thwart the will of the people as expressed in their constitutions, and when the governor gives consideration to this important matter, it is hoped and expected that he will decline to assert the right to appoint; and, obeying the mandate of the constitution, call a special election.

Mr. President, after this eminent legal advice had come to the governor so gratuitously, so authoritatively, and so free from political bias I think the governor was rather stumped for a time. But he still held religiously to his Republican policy of economy, so successfully championed by our President. He refused to call a special election, at least not before the next state-wide election. Early in November he did call a special election for June 30, 1926, which is the date of our next state-wide primary election.

Then some more legal advice was offered to the governor, this time by progressive attorneys, who took exception to Senator MOSES's interpretation of the Constitution. One opinion came from a former district judge of our State, another from the United States district attorney, and a few days after the governor set the date for the special election on June 30 he made a temporary appointment to fill the vacancy until the election next June.

This action of the governor, it seems to me, is in strict accord with the intention of the seventeenth amendment to the Constitution of the United States. The appointment is for the shortest time possible, and for the election on the regular election day, thus avoiding the expense of an extra election. The appointment was made less than a month before the convening of Congress and is to last only until June 30, the date of the first state-wide election.

Mr. President, the Governor of the State of North Dakota appointed Mr. NYE, and his credentials were presented here on the opening day of the session. Upon request of the Republican floor leader, I moved to refer these credentials to the Committee on Privileges and Elections.

In the meantime, I understand, some protest came in to some Members of the Senate against the seating of Mr. NYE. All of these protests came from the stalwart element of the Republican Party of North Dakota. Newspaper reports even claimed that the Republican State central committee had met and

adopted resolutions of protest and sent them in. This, however, was not true, as a majority of this Republican State central committee, legally chosen and duly qualified, are progressive Republicans and favor the seating of Mr. NYE. I am reliably informed that no call was made for this State committee and that no meeting was held.

A brief was submitted to the Committee on Privileges and Elections by the able junior Senator from West Virginia, a member of the committee, which—we were assured—would be *wholly* unbiased. However, the chairman was kind enough to ask Mr. NYE to have a brief submitted. Mr. NYE, not being financially able to hire legal ability, did enlist an able attorney, Congressman VOIGT, of Wisconsin. Mr. VOIGT prepared a brief and ably presented it before the committee, setting forth the North Dakota law as he saw it. This brief was read into the record on the first day of the hearing.

On the other hand, before that same committee and at the same hearing Congressman BURTNESS, of the first district of North Dakota, appeared with a brief against the seating of Mr. NYE, stating to the committee that he came before them reluctantly at the request of some people from North Dakota. I will admit that this did look a little strange that a Congressman would appear before the committee arguing against the seating of an appointee from his own State, that his own State might not have full representation in the Senate.

The newspapers of the city, in reporting this hearing, all carried the statement that Congressman BURTNESS was appearing at the request of the Republican State central committee of North Dakota. This was, of course, an erroneous statement by some one evidently for political purposes.

Mr. BURTNESS did suggest, however, that one of the eminent attorneys of North Dakota, who had carefully gone into the case, was Mr. Divet, of Fargo. I might say that Mr. Divet is the attorney—on an annual salary—for the Bankers' Association of North Dakota, so evidently the Bankers' Association of North Dakota is opposed to the seating of Mr. NYE.

Mr. President, I can not help but wonder, if the Governor of North Dakota had been known to be a "safe and sane" Republican, who would have appointed a Senator who would have been "safe and sane" for the Republican administration, whether our genial chairman of the Grand Old Party's senatorial campaign committee would have taken the trouble to journey from his home in old New Hampshire, up in the beautiful White Mountains of New England, out to the great western plains, and there to have conferred with a few prejudiced politicians, and then written an opinion telling the governor that he would violate his sacred oath of office if he made any appointment, and that there was no chance of an appointee being seated.

Mr. President, I can not help but wonder if the Governor of North Dakota had appointed a man who was known to be an ardent supporter of the administration; a man who, if seated, would have voted for the pet administration measures, the Mellon tax plan, reducing the taxes for the millionaire corporations; if he was known to be an advocate of the plan for the farmers to work out their own salvation through impossible cooperative movements, and opposed to any worth-while farm legislation which would be of real benefit to agriculture; in other words, I am wondering if Mr. NYE had been known to be a regular Republican if all these objections would have been raised to his being seated, and if it would have resulted in all this quibbling as to the technicalities of the North Dakota law.

I am wondering if the administration group of the Senate had the comparative numerical strength that the administration group at the opposite end of the Capitol has, if this case would not have been summarily disposed of as were the Progressive Members of Congress from Wisconsin and North Dakota recently disposed of by the administration group of the House.

I can not help but wonder, Mr. President, if this fight against Mr. NYE is not, to some extent at least, brought on by the fact that he is known to be a Progressive; known to oppose the Mellon plan of taxation; known to be a real representative of the farmers, and anxious to see something done besides giving them more credit and a higher duty for manufacturers, an increase in freight rates, and remitting taxes to multimillionaire corporations.

I am wondering if the present desperate straits of the farmers of the Nation have not something to do with this case. Even in the face of the administration reports that prosperity is at hand, the fact remains that the farmers, who produce the food products to feed the Nation, are not included in this prosperity.

I wish now to read an editorial which appeared in the morning Herald a few days ago, written by Mr. Brisbane. It is as follows:

One sad note rings from the White House. The President worries about the farmers' attitude. When all the world is bright, farmers persist in their unhappy attitude. Senator CAPPER, who knows farmers, says they might think as they vote, or even vote as they think—serious threat for a Republican Senator.

The President has talked to them. Our "best minds" have assured them that they are all right as long as railroads are paying dividends regularly, but as the door mouse said of his watch after he had put the best butter inside of it, "Nothing seems to please them."

You might ask why the farmer gets only 3 cents for milk that costs the consumer 15 to 25 cents. Or why the Government allowed everybody else to raise his prices in war, but compelled farmers to hold down the price of wheat—in their one chance to make a killing.

But such questions are included in the word "Bolshevism," and do not become any 100 per cent American questioner.

The Republican problem is how to help the farmer and make him happy without really doing anything for him. A hard problem.

It's so simple with railroads. When they need money, a Government commission raises rates, the people pay, and everyone is happy.

Mr. President, even Secretary Mellon said that 1925 was a prosperous year. It has been suggested by some that it has been rather prosperous inasmuch as the Secretary of the Treasury had rebated, according to the best figures we can get, some $450,000—in cold cash in tax rebates to one of his own companies. That would be quite prosperous for himself at least. During the latter part of 1925 the House passed a tax reduction bill which, if it goes through the Senate, will reduce the taxes of Mr. Mellon about $1,000,000, some more prosperity in 1925 for Mr. Mellon. It is suggested that this $450,000 rebate in the taxes to Mr. Mellon, if divided up, would mean about $1,500 in cash for himself for each working day of the year. According to statistics from our agricultural experts it would be about an average of the total income for three farm families for a year that Mr. Mellon had rebated to himself for each day of the year. Prosperity? Yes; but not to the farmers.

I could quote from agricultural statistics here to show that the farmers are not prosperous, but I shall not attempt to do so. I do wish to call attention to a statement made on the floor of the Senate a few days ago by the junior Senator from Nebraska [Mr. HOWELL], comparing the 1925 crop with the 1924 crop, and the 1925 prices with the 1924 prices on wheat, corn, and oats in South Dakota, Iowa, Kansas, and Nebraska, to the effect that an aggregate decrease in the price to the farmers in those four States was estimated to be $486,600,000.

I also want to call attention to a statement made by the senior Senator from Illinois [Mr. MCKINLEY] about a week ago, when he said:

> Notwithstanding the rosy, reassuring statements put out by the eastern bankers, there is no doubt that a crisis exists among western and central western farmers.

To sum it all up the farmers' situation is desperate and Members of the Senate who are at all posted on the condition of the farmers realize that something ought to be done for these producers of food products. We know that only recently our eminent President journeyed to Chicago to speak to one of the great farm organizations; that his speech was apparently not well received, and that before the convention closed a president of that organization was chosen who was known to oppose openly the President's so-called agricultural program.

Since then a great agricultural conference has been held in Iowa called by the bankers' association. Think of it—an agricultural conference called by the bankers' association. The farmers were invited, but I understand that not many attended. Why? Because the farmers of the great agricultural State of Iowa have lost confidence in their bankers—a desperate situation.

Mr. President, North Dakota is only one of those great agricultural States that have been hit so hard by the conditions that have existed during the past five years. That great agricultural State, composed largely of farmers, is entitled to full representation in this body.

I have a letter just received from a committee of farmers from a county in North Dakota which I wish to read to the Senate. It is as follows:

COOPERSTOWN, N. DAK.,
December 29, 1925.

Senator LYNN J. FRAZIER,
Washington, D. C.

DEAR SENATOR: As a committee selected by a large meeting of farmers to-day we beg to advise that there is being forwarded to your address a piece of furniture which we wish to have presented to Senator NYE.

It is a milking stool, and we have decided to supply it that Mr. NYE may have a seat in the Senate. If those who do not understand

our interests in the Northwest will not provide our Senator with a seat, we will, temporarily at least, and next summer we will provide him with credentials that can not be questioned even by quibbling technicality hunters in the Senate.

CHAS. YOUNG,
GEO. E. BROSTRUP,
C. C. SIMONSON.

Mr. President, I believe that the sentiment expressed in the letter just read is the sentiment of the big majority not only of the farmers but of the people at large in the State of North Dakota.

I believe our law is broad enough to authorize the governor to make the appointment in question. I know that this case is being closely watched not only by the Progressives of North Dakota but by the Progressives in farming populations all over the great agricultural States of the Union.

In conclusion, I should like to submit a few questions which I contend the Senate must determine in its decision in this case.

Can the Senate blind itself to that provision of the State constitution, the basic law of North Dakota, granting to the governor the power to appoint in the emergency which now exists because of the death of the late Senator Ladd?

Will the Senate, as did one Senator in advising the governor against making an appointment, ignore the reenactment of the North Dakota vacancy statute in 1917 following the adoption of the seventeenth amendment, which statute provides in strong and unequivocal language for the filling of all vacancies not otherwise provided for by statute?

Will the Senate refuse North Dakota its full representation here in the face of that clearly written feature of our Federal Constitution which declares that no State shall be deprived of equal suffrage in the Senate without its consent?

Not only has the governor in making the appointment complied with the State constitution and the statutes of the State, but he has complied explicitly with the spirit of the seventeenth amendment to the Federal Constitution. He has called for a special election to be held June 30 in conjunction with the first state-wide election. He thus saves the taxpayers of the State of North Dakota an added tax burden of approximately $200,000. In North Dakota this saving is a material one. Then to provide the representation in this session of the Senate as recommended by the people of the State he has made a temporary appointment. Is it possible that the Senate will disregard these facts in its consideration of this case?

Will the Senate give no heed to the long-established policy of North Dakota in giving to its executive wide and liberal appointive powers in the event of vacancies?

Will the Senate leave North Dakota with only half representation in this session of the Senate, which is to consider and act upon so many matters of vital importance to the people of that State?

Is there some powerful, unseen influence that can blind the majority of the Senators of this body against these very plain truths?

Mr. President, I may say that in the discussion of the technicalities it seems to me that common sense and justice should enter. It seems to me that the State of North Dakota is entitled, as are other States, to full representation here, and that, judging from the attitude of the Governor of North Dakota, unless Mr. NYE is seated we will not have a full representation until after the 30th of next June, which is the date for which the special election has been called.

Mr. President, out of respect to the memory of the late Senator Ladd, whose life work was given for the betterment of conditions of the common people of his State and of the Nation, I want to urge that this appointee be seated, in order that the late Senator Ladd's great work may continue.

Few men in my State have ever held the high esteem and respect of the people as did the late Senator whose seat is now vacant.

Mr. President, this case should be decided without a reasonable doubt. If Senators are satisfied in their own minds that the governor had the right to make the appointment, then, of course, it is their duty to vote for the seating of Mr. NYE. If there is a doubt in the mind of any Senator as to the Governor of North Dakota having the authority to make the appointment under the law, I wish to urge that the benefit of the doubt be given to the State, in order that we may have our constitutional right of equal suffrage in the United States Senate.

During the delivery of Mr. FRAZIER'S speech,

Mr. CURTIS. Mr. President, will the Senator yield to me to submit a unanimous-consent request?

Mr. FRAZIER. Certainly.

Mr. CURTIS. I make the request which I send to the desk.

The VICE PRESIDENT. The clerk will read.

The Chief Clerk read as follows:

Ordered, by unanimous consent, That on the calendar day of Tuesday, January 12, 1926, at 3.30 o'clock p. m., the Senate will proceed to vote without further debate upon any amendment that may be pending, any amendment that may be offered, and upon the resolution, Senate Resolution 104, declaring GERALD P. NYE not entitled to a seat in the United States Senate, etc., through the regular parliamentary stages to its final disposition; that after the Senate finishes its business to-day the Senate will take a recess until 12 o'clock meridian to-morrow, and that no Senator shall speak more than once or longer than 30 minutes upon the resolution except by unanimous consent.

Mr. ROBINSON of Arkansas. Mr. President, I understand the Senator who made the objection before has withdrawn his objection.

Mr. CURTIS. So I understand.

The VICE PRESIDENT. Is there objection to the unanimous-consent request?

Mr. BLEASE. Mr. President, when the unanimous-consent request was first presented I was not in the Chamber. Since I have had an opportunity to confer with Senators on both sides in regard to the matter, I find that there is no disposition to cut anybody off who desires to debate, which was my understanding of the matter in the beginning. Since learning the real purpose of the request I do not object to it.

I desire to state now that in withdrawing my objection I am setting no precedent, because whenever I believe that there is an effort on any occasion to deprive any Senator of an opportunity to speak I shall fight it.

Mr. DILL. Mr. President, I raised the question about the limitation to 15 minutes, and I am very much inclined to raise the question about the limitation of 30 minutes. I rather resent the attitude of certain Senators who seem to assume that other Senators have not a right to speak on this question, which is a question of the highest privilege, affecting everyone in the Senate. I think it is a question of all questions on which Senators should be permitted to state their views. It is not an ordinary question; it is an extraordinary question. There was a proposition submitted to limit debate to 15 minutes, and then the limit was raised to 30 minutes. I do not know whether there will be time enough for those who want to discuss the matter for 30 minutes to-morrow. I do not know that I shall want to talk even 10 minutes, but if I am asked questions and take the time to answer them, I do not want to have to watch the clock.

Mr. CURTIS. Of course, the Senator realizes that by unanimous consent he can talk longer than 30 minutes. I do not believe we shall take up all the time. One Senator has assured me that he will not take over 10 minutes. The Senator now occupying the floor will finish to-night, and there will be only four to speak to-morrow. The limit was raised to 30 minutes at the suggestion of the Senator from Washington, and I hope he will not object.

Mr. DILL. Yes; the request was changed at my suggestion, but there is an implication here that I am making unnecessary difficulty about it, and I claim the right to talk on this subject, as well as anybody else. I am going to object at this time.

The VICE PRESIDENT. Objection is made.

Mr. CURTIS. I give notice again that I shall ask Senators to stay here as long as possible this evening, that we may get through with this debate.

Mr. UNDERWOOD. Mr. President, will the Senator from North Dakota yield to me to make a request?

Mr. FRAZIER. Certainly.

Mr. UNDERWOOD. I live 17 miles out in the country and want to leave the Chamber at this time. Before I go I desire to submit a report from a committee with reference to a nomination. If the Senate will allow me as in executive session by unanimous consent to make the report, I would appreciate it very much.

Mr. CURTIS. It is just to go to the calendar?

Mr. UNDERWOOD. Just to go to the calendar.

Mr. CURTIS. Very well.

The VICE PRESIDENT. Is there objection? The Chair hears none, and the Senator from Alabama will send the report to the desk.

Mr. UNDERWOOD. I ask that the nomination which I send to the desk may go to the calendar as in executive session.

The VICE PRESIDENT. Without objection, it is so ordered.

After the conclusion of Mr. FRAZIER'S speech,

Mr. COPELAND. Mr. President, may I inquire if it is the purpose of the Senator from Kansas to keep the Senate in session any later this evening?

Mr. CURTIS. Yes; just as long as I can.

Mr. COPELAND. That being the case, I will proceed.

Mr. President, if the rules of strict legal construction are to be applied to this case, I have no doubt that Mr. NYE will not be given a seat in the Senate.

As I view it, the seventeenth amendment to the Constitution makes it obligatory upon the legislature of each State to amend its law and to make provision for the temporary filling of any vacancy which may occur in that particular State in the office of United States Senator.

In the debate as it has proceeded during the past several days, repeated reference has been made to the constitution of North Dakota. That is a constitution adopted a long time before the change in the Federal Constitution, and yet is a constitution which provides in certain emergencies for the filling of vacancies on the part of the governor.

But those of us who recall the discussion which took place not alone in the Congress of the United States but all over the country, in every State and village and hamlet, in every theater, public hall, town hall, and schoolhouse, remember how insistent the people were that there should be a change in the method of choosing United States Senators, and that the great scandals which had come upon many States by the use of great sums of money in the debauchery of legislatures should cease. The people demanded that senatorial elections should be by the voters directly and that Senators should not be chosen by the indirect method of election by the legislatures.

The debates which took place in Congress during the consideration of that proposed amendment are very instructive. I have taken pains to read them, and it is interesting to observe how history repeats itself. Almost every question which we have heard argued here in the past week or two about whether a Senator is or is not a State officer and all the other collateral questions involved in the election of United States Senators were debated in the Congress and considered at the time.

As I see it, it is perfectly plain it was not sufficient for the State of North Dakota to have a constitution which provided that under certain circumstances the governor might fill a vacancy in that State's representation in the Senate. The adoption of the seventeenth amendment to the Constituion placed a new duty upon the legislature—the obligation to provide a means for the selection of a person to fill a vacancy in the United States Senate, provided, of course, the people of the State wanted the vacancy to be filled. So I think we must conclude that Mr. NYE can not be seated upon the strength of the provision in the constitution of North Dakota, section 78. We can not expect to seat Mr. NYE on the strength of that particular section of the North Dakota constitution, because it goes so far back of the amendment to the Constitution of the United States that by no stretch of the imagination, as I see it, can it be made to apply to the appointment of Mr. NYE. There must be found some statutory provision; there must be found evidence that the Legislature of the State of North Dakota did actually, in the face of the amendment to the Constitution of the United States, amend its statutes so as to provide for the temporary filling of the vacancy in question.

In the compilation of the laws of North Dakota for 1913 there is found a law which has been constantly referred to in the debates. This law was passed by the Legislature of North Dakota giving power to the governor to fill vacancies in State offices. Of course, the passage of the law in 1913 would not cover this case, because the passage of the law in 1913 was at a time previous to the adoption of the seventeenth amendment to the Constitution of the United States.

As I understand it, the Legislature of North Dakota meets every two years. It had adjourned in 1913 before any opportunity was had to pass an enabling act. In 1915 the session laws were silent upon the subject, but in 1917 the act which had been in the laws of North Dakota from the time it was a Territory, which provided for the filling of vacancies, was amended and reenacted. There are certain very interesting things involved as I see it in the reenactment of that law.

I have been much impressed by what the chairman of the subcommittee of the Committee on Privileges and Elections, the distinguished Senator from West Virginia [Mr. GOFF], said in his original presentation. Since then I have been enlightened by what my colleague, the distinguished Senator from Maryland [Mr. BRUCE], has said about statutory construction. I have also been enlightened by what the new and able Senator from New Mexico [Mr. BRATTON] has said regarding the effect of the reenactment of a law. I may say to my brethren that I have also read what Sutherland has written in his work on Statutory Construction.

In consequence, I realize that under the general rule of statutory construction the reenactment of a statute has, in effect, no control whatever upon events except to continue the action of the law as it previously existed. But I am wondering, Mr. President, if there are no exceptions to this rule. Doctors sometimes change their minds; I assume that lawyers rarely do; but courts sometimes reverse themselves.

I can see how unwise it would be, in general, to have any other construction placed upon a reenactment than that it is simply to give continuity to the law in general; but here is a statute which was passed after the acceptance and ratification of the seventeenth amendment to the Constitution of the United States. Here is an act which it seems to me would give any person so inclined ample excuse to say that it complied with the requirements of the seventeenth amendment to the Constitution of the United States.

The Senate is the sole judge of the qualifications of its Members. The Senate can determine for itself, upon reasonable evidence presented to it, whether or not Mr. NYE can take his seat in this body.

It is a very serious thing, indeed, my colleagues, to deprive any State of its constitutional right to full representation. That question has been debated very ably here to-day. It was debated when the seventeenth amendment to the Constitution was pending before the Senate in 1911, and I wish to read two short paragraphs from the address of Senator Sutherland, then United States Senator from Utah and now a member of the United States Supreme Court. I may say that there had been a long-running debate, participated in by my illustrious predecessor, Senator Root, of New York; by Senator Bristow, by Senator BORAH, and by Senator Williams, of Mississippi, and in the course of his reply to these various speeches Senator Sutherland said:

> It has been suggested that if we shall adopt this amendment and provide for the election of United States Senators by a direct vote of the people it will next be proposed to destroy the equal representation which the States of the Union now enjoy in the Senate, and that we shall have a proposition, which ultimately will be adopted, that will provide for the same measure of representation that prevails in the other House, and that Senators will be elected in proportion to population, and there will not be, as now, an equal representation from each State.
>
> I do not well see how that can be brought about under that clause of the Constitution which provides that no State shall be deprived of its equal representation in this body without its own consent. I know it has been suggested that even that might be amended, but—

And I want to call the attention of Senators especially to this statement—

> but to destroy that provision would not be a change of the Constitution by the orderly processes of constitutional amendment. It would be equivalent to a revolution. That is the one thing which the people who framed this Constitution stipulated among themselves should never be altered so long as one State in the Union objected to it. I am not at all afraid that any serious attempt will ever be made to bring about that result.

Senator Sutherland spoke about the denial of equal representation in the Senate as equivalent to a revolution. I think it would be a very serious matter if we were to deprive the State of North Dakota of its equal representation in this body. That is true always of any State; but if I am rightly advised, there never was a time in the history of North Dakota when it needed equal representation more than it does to-day. If I am rightly advised, Mr. President—without seeking at all to place responsibility for the condition—many of the farmers of that State are in bankruptcy, hundreds of banks have failed, and bank failures are taking place every week.

There must be fundamental, Federal, national reasons for a condition which can operate in that way in the State of North Dakota and other States of the Northwest. If at any time in the history of North Dakota it was entitled to equal representation, it is now; and I say, Senators, that, in view of the situation, not for any light reason must a seat be denied to Mr. NYE.

As I said, I listened with the greatest interest to the illuminating presentation of his report by the Senator from West Virginia [Mr. GOFF]. In response to the questions I asked him, as in response to questions that other Members of the Senate asked him, he said:

> Yes; of course the intent of the legislature when it passed any law must be considered in its interpretation, and the intent of the Legislature of North Dakota in the session of 1917 must be considered in interpreting what was meant by the statute amended and reenacted in that particular year.

The weakness of the position of the committee as I see it, Mr. President, is the fact that to all appearances, at least, the committee decided the question of intent by the internal evidence, by the evidence of the record alone, largely, as I see it, by the evidence of the act itself. There were some references

made to the journal of the legislature, but so far as I am concerned I was not satisfied that the committee gave full consideration to the intent of the legislature in 1917 in the reenactment of this law.

I desire to ask the Senator from West Virginia a question, if he will permit me to do so.

I notice in the session laws of 1917 that Mr. Lindstrom—I think Senator Lindstrom of that State—fathered this bill. I do not know Mr. Lindstrom; I am not advised as to whether he is still alive or not, but I should like to ask the Senator from West Virginia if any attempt was made to determine from Mr. Lindstrom or from other men who were actually in that session of the legislature what was the intent of the legislature as regards this particular measure?

Mr. GOFF. Mr. President——

The PRESIDING OFFICER (Mr. HEFLIN in the chair). Does the Senator from New York yield to the Senator from West Virginia?

Mr. COPELAND. I do.

Mr. GOFF. I will say to the Senator from New York, in answer to his question, that no specific correspondence took place between the committee and Senator Lindstrom; that there was no suggestion that such correspondence should be initiated; that the general attitude of the Legislature of North Dakota at that time was stated in the presence of the committee and argued in the presence of the Senator from North Dakota [Mr. FRAZIER], now in this body and at that time the Governor of North Dakota; that there was no intent present in the mind of anyone that the reenactment of the act of 1913 was for any purpose other than the purpose of giving the Governor of North Dakota the authority to consent to the reappointment by members of the county commissioners of State's attorneys when they had been removed from office. The Senator from North Dakota [Mr. FRAZIER] was of the same view.

I will add, furthermore, that I do not think the purpose or the intent of any legislative enactment, after it has been formally passed and enacted by the legislature of any State, can be aided or abetted or changed or modified by the opinion or the view of any legislator who was a member of the body that passed the act. The act speaks for itself; and when it has passed from the legislative assembly through the hands of the governor, who approves it, it then must take its place in the realm of constructive and constitutional law; and not only would it have been unnecessary, but I will say to my distinguished friend from New York that in my opinion it would have been improper to take the views of the different members of that assembly as an aid to what they meant in the use of the English language.

Mr. COPELAND. Mr. President, I thank the Senator. He has made the reply which I expected to receive, and exactly the sort of reply I would make if I were in his position. If you are judging what is meant by a passage in the Scriptures, there is no way to judge it except by the internal evidence. Of course, if by any chance there should be archeological discoveries made that had some bearing upon it they might be considered. That is because these events happened so long ago.

From 1917 to 1926, however, is but nine years. Men are yet alive, Mr. President, a cloud of witnesses could be found to give evidence as to what the legislature intended. When men judge things wholly by the internal evidence they are bound to have individual opinions, of course.

As I view it, without having before me the evidence of men now alive who know, in view of the fact that the seventeenth amendment to the Constitution required this action, and this was the first time the subject was brought before the Legislature of North Dakota after the passage of that amendment, I can readily believe that the Legislature of North Dakota had full knowledge of the amendment, and that it intended by the reenactment and amendment of the old law to include the office of a United States Senator.

It would have been much better, of course, if other language had been used, and if a direct reference had been made to the United States senatorship; but, while I do not know anything about the Legislature of North Dakota, I assume that it is not made up of lawyers so distinguished as my friend from West Virginia. A lot of us get into legislative bodies who do not know any too much about law, Mr. President. We do not know all about the technicalities of statutory construction.

When a layman is on the witness stand and is sworn to tell the truth, the whole truth, and nothing but the truth, it is difficult for him to get into his head that his answers must be responsive and must not wander at all from the leading strings of the attorney in charge of the case. I can readily understand how the men in the Legislature of North Dakota, ignorant of these things relating to statutory construction, thought that the language which had done so well for other State offices or for State officers, would be quite sufficient to cover the United States senatorship.

I do not, however, agree with the Senator from West Virginia that this case should be settled upon the written record alone. If there are men now alive who know what the intent of the Legislature of North Dakota was in 1917, I contend in all seriousness, Mr. President, that the committee should ask that this matter be recommitted, in order that they may find out the truth regarding it.

The distinguished Senator from Maryland [Mr. BRUCE] this morning—I did not have the pleasure of hearing all of his address, having been detained in a committee hearing—called attention to the fact that all but two, I think he said, of the States of the Union had passed enabling acts, and I assume North Dakota was one of the two.

Mr. GOFF. Forty-one States.

Mr. COPELAND. Well, all but two of those that had the matter before them.

Mr. GOFF. Kansas was the other one.

Mr. COPELAND. Kansas and North Dakota. That argument, presented by the Senator from Maryland, means this to me: It means that if 46 States of this Union have given consideration to the question of passing an enabling act, in all human probability North Dakota gave consideration to that, too, and that the Legislature of North Dakota, when it passed the act of 1917, thought it was including the office of United States Senator.

If the Legislature of North Dakota were in session, or if this were the year of their biennial session, I should be inclined to pass the case back to them and ask them to pass this enabling act in language which could be understood by he who runs or by a United States Senator.

Mr. GOFF. Mr. President, will the Senator yield?

The VICE PRESIDENT. Does the Senator from New York yield to the Senator from West Virginia?

Mr. COPELAND. I yield to the Senator.

Mr. GOFF. Why could not the Legislature of North Dakota be specially convened to pass the act to which the Senator from New York refers?

Mr. COPELAND. Mr. President, I did not read the publicity reports of the income tax as it relates to West Virginia; but, without knowing anything about it except this question, I am convinced that the Senator from West Virginia pays a very liberal income tax. The reason why there can not be a meeting of the Legislature of North Dakota is, if I am rightly advised—the reason why the Governor of North Dakota did not call a special election—is because of the poverty of the State.

Mr. GOFF. Mr. President, if the Senator will again yield——

The VICE PRESIDENT. Does the Senator from New York further yield to the Senator from West Virginia?

Mr. COPELAND. I do.

Mr. GOFF. I would suggest to my distinguished friend that he knows full well that expediency never can take the place of principle, and especially in any constitutional discussion or construction.

Mr. COPELAND. I agree fully.

Mr. HEFLIN. Mr. President, if the Senator from New York will permit me right there——

The VICE PRESIDENT. Does the Senator from New York yield to the Senator from Alabama?

Mr. COPELAND. I do.

Mr. HEFLIN. Where there is a question of doubt, such as Senators are bound to admit exists here, would it not be well and very humane for Senators to take into consideration the fact that a State is almost in a bankrupt condition, and let that influence them somewhat in rendering a verdict in a matter which involves the representation of a State in the Senate under the Constitution of the United States?

Mr. COPELAND. I thank the Senator. May I say to my distinguished friend from West Virginia that I should consider it most immoral for any legislative body, especially the dignified Senate—and as I look at the Vice President I am reminded he thinks we are sometimes not very dignified—I would think it immoral for the Senate to do a wrong thing for the sake of expediency. But I do not think we have to resort to so low a motive as expediency in doing this thing. For my part, I believe that the Legislature of North Dakota intended, by the act of 1917, to enable its governor to fill a vacancy in this office. I think it is a matter of law and not expediency, and that we have ample reason for placing such an interpretation upon the act of 1917 as would legalize the seating of Mr. NYE.

There has been raised in the Senate a very serious reflection upon the legality of the seating of certain Senators. I have not been able to understand why the question was not raised long

ago as regards our colleague the Senator from Massachusetts [Mr. BUTLER]. I believe that the Legislature of Massachusetts went far afield when it provided its enabling act to permit the filling of a vacancy, as took place in the appointment of Mr. BUTLER. It was clearly the intention of the people of the United States in adopting the seventeenth amendment that Senators are to be elected, and under the spirit and letter of the seventeenth amendment only a temporary appointment can be made. If it is legal for Mr. BUTLER to hold his office in this body, and if Senators take the view that it is legal, I can not for the life of me see why any man should consider that the seating of Mr. NYE would be considered a matter of expediency and not of law.

When section 696 of the Compiled Laws of North Dakota, 1913, was amended and reenacted in 1917, I can not understand why it was, if the legislature had in mind simply the changing of the first section—was it the first section?

Mr. GOFF. The first section of the law passed in 1913 became the fourth section of that passed in 1917.

Mr. COPELAND. Mr. President, if the Legislature of North Dakota had intended merely to amend what has now become subdivision 1 of chapter 696, if the Legislature of North Dakota had intended to do nothing except to amend that one small section, the natural course would have been for them to say in the preamble of the measure that it was the intent to amend that particular subdivision. But that is not what happened. I am confident in my own mind that it was done as it was because the legislature had before it the knowledge of the adoption of the seventeenth amendment to the Constitution of the United States and had the intent to include in this act the power on the part of the governor to fill a vacancy in the office of United States Senator.

I do not wish to leave this, however, until I say again that I do not believe the committee has performed its full function, in that it has failed to find out from living men, as it could have done, what actually was the intent of the legislature in amending and reenacting chapter 696.

The State of North Dakota has a constitutional right to be represented in this body by two Senators. By the rules of strict construction, by what some of my colleagues have called technicalities, an effort is made to deprive the State of equal representation. When we reflect how lightly many persons in this country regard the Congress of the United States, we should never seek to take any action which would bring grief and criticism and ill feeling to the hearts of our people if there is any reasonable way by which we may avoid the unkind action. I can see no reason in the world why the Senate of the United States might not accept the enabling act in the language found in this act of 1917 as ample legal authority for the seating of Mr. NYE.

I believe this discussion has made it apparent that there should be a review of its enabling act on the part of every legislature in the United States. I think it would be well for every State to reexamine its law, to see if proper provision has been made for the filling of a vacancy in the office of United States Senator.

It was intended, by the adoption of the seventeenth amendment, that the people should have the right to choose their Senators. The Governor of the State of North Dakota has made provision that when the roads break up in the spring there shall be an election.

I heard it suggested by my colleague from South Carolina that if anybody is to blame in this matter, it is the governor, that he should have called a special session of the legislature. I do not want the people of North Dakota to suffer because the governor made a mistake, and it is not necessary that they should. We have, in this act of 1917, passed four years after the adoption of the seventeenth amendment to the Federal Constitution, ample, sensible, and, in my judgment, legal reason for the seating of Mr. NYE, and I hope that the Senate will not deny to North Dakota, in the time of her stress and trial, at a time when she wants assistance from the Federal Government in the way of legislation, at least some participation in the framing of that legislation.

In the name of the people of North Dakota, in the name of the people in my State who are interested in this question, and watching to see what we do, I beg Senators to vote to seat Mr. NYE, when they come to vote to-morrow, so that the State of North Dakota may have equal representation in this body.

RECESS

Mr. CURTIS. I move that the Senate take a recess until 12 o'clock to-morrow.

The motion was agreed to; and the Senate (at 6 o'clock p. m.) took a recess until to-morrow, Tuesday, January 12, 1926, at 12 o'clock meridian.

HOUSE OF REPRESENTATIVES

MONDAY, *January 11, 1926*

The House met at 12 o'clock noon.

The Chaplain, Rev. James Shera Montgomery, D. D., offered the following prayer:

Almighty God, for the birth of this new day we bless Thee; for every hope and prospect that makes us happy we give Thee thanks. In Thee we have our rest and security. Thy loving Providence is a daily miracle. May it never be overlooked or undervalued. Fill our lives with mighty meaning. Give them the vision of the unattained and a pulsing passion to realize it. May the law of truth be native to the very depths of our beings. Keep in our minds this day the counsels of the Lord. May the sweetness of Thy love, the sense of Thy mercy, and the joy of Thy presence fill all our homes. Amen.

The Journal of the proceedings of Saturday, January 9, 1926, was read and approved.

INTERIOR DEPARTMENT APPROPRIATION BILL

Mr. CRAMTON. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the state of the Union for the further consideration of the Interior Department appropriation bill, H. R. 6707.

Mr. BLANTON. Mr. Speaker, may I ask the gentleman a question?

Mr. CRAMTON. I yield for a question.

Mr. BLANTON. I want to ask the gentleman this: To-day is District day. I know the gentleman has a right to ask for recognition if he claims it, and I know the Chair has a right to recognize him in preference to the gentleman from Maryland, because the two bills have equal privilege here in the House.

Mr. CRAMTON. I am not prepared to admit that——

Mr. BLANTON. That is the fact, because this is District day, and it is simply a question of recognition.

Mr. CRAMTON. That is the gentleman's statement, not mine.

Mr. BLANTON. On a forced vote the House could decide which bill it would take up. To-day is District day. There are two bills reported by the District Committee on the calendar, and it will not take an hour to dispose of both of them. The gentleman from Connecticut [Mr. TILSON] has given out, both to members of the District Committee and to Washington people, that he was going to give this day to the District and let the District finish its business.

Mr. TILSON. If the gentleman will only possess his soul in patience, we are only trying to get this bill out of the way, so that the District Committee may have its day.

Mr. CRAMTON. Of course, if the gentleman is going to filibuster against——

Mr. BLANTON. I have no intention of filibustering. I want to say this to the gentleman from Michigan. If he will only let the District have its day, we will consume but very little time. I think it would just take not over 30 minutes to the side, as there is only one bill that is controversial.

Mr. CRAMTON. If the gentleman from Texas will permit. This bill, the gentleman knows, is a very important measure. It has been before the House for a long time——

Mr. BLANTON. If the gentleman——

Mr. CRAMTON. If the gentleman will permit, we expect that we can complete this bill in an hour or less, and there is no reason why we should take more time, and then there will be abundance of time after that for District business. Therefore it seems the orderly way is to complete the bill that is before the House.

Mr. BLANTON. Let me ask the gentleman this question. Will the gentleman yield?

Mr. CRAMTON. Yes; but I hope the gentleman will not make any long argument.

Mr. BLANTON. I want to ask the gentleman this: Does not the gentleman know that there are some items in this Interior appropriation bill yet to come that are quite controversial; items upon which there is going to be points of order and upon which there is going to be argument that may be extended?

Mr. CRAMTON. That is a situation of which I was not aware before.

Mr. BLANTON. The gentleman may just as well notice now that there are certain items in his bill such as I have mentioned. Why not let us come in here and have 30 minutes to the side in which to dispose of the District business? Otherwise we will lose District day. I know that we are not going to finish the consideration of this Interior Department